Intellectual Property and cultural industries in the face of Generative Artificial Intelligence

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Into Spanish, Juana Escudero Méndez

Acknowledgments:
General Subdirectorate of Intellectual Property of the Ministry of Culture of Spain
Department of Culture, Tourism, and Sports of the Community of Madrid
General Society of Authors and Editors, SGAE
SGAE Foundation

Design and layout: Aries Grupo de Comunicación
ISBN: 978-84-09-78084-6

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Preamble

When we planned the events to be held in 2024 to celebrate the 125th anniversary of the founding of what was initially called the Spanish Authors' Society, it seemed essential, in order to link the past with the future, to address the concerns and challenges that Artificial Intelligence poses for intellectual property.

The then president of the Instituto Autor (Intellectual Property Institute) was tasked with designing the program and the event, which, with the invaluable financial and logistical support of the Fundación SGAE (SGAE Foundation), crystallized into a truly ambitious project: an international congress entitled *Intellectual Property and Cultural Industries in the face of Generative Artificial Intelligence,* bringing together leading national and international experts. I should point out that the project was enthusiastically supported from the outset by the Regional Ministry of Culture, Tourism, and Sport of the Autonomous Community of Madrid and the Ministry of Culture, through the Sub-directorate General for Intellectual Property.

Thus, on March 14 and 15, 2024, a congress that was simultaneously translated and broadcast live, took place at the Casa de las Alhajas in Madrid, which became the event with the greatest public impact of those held on the occasion of the 125th anniversary of SGAE, which we must thank to a certain extent to the effort made to secure the presence of international figures such as Professor Jane Ginsburg and the undisputed authority on the subject, Ryan Abbott. However, the success of the event was not only due to the excellent program or the quality of the speakers, but also to the evident interest aroused by both the study of artificial intelligence and the impact it is already having and will have on our intellectual property sector.

From a commercial or economic point of view, we had an economic presentation at the Congress by Klaus Goldhammer, who explained the magnificent *"Economic and statistical study on the impact of Artificial Intelligence on the music sector"*. This study was commissioned by sister organizations GEMA (Germany) and SACEM (France), and translated into Spanish by the Instituto Autor. However, while the outlook from this financial perspective is disturbing, we must not overlook the philosophical and humanistic approach taken by Leonardo Cervera Navas, Secretary General of the European Data Protection Supervisor, in his presentation *"The regulation of artificial intelligence in Europe: a humanistic approach,"* which traced the history of the European humanistic tradition and concluded by championing the concept of "digital humanism." It may seem that the digital world follows a different set of rules, but we must not be mistaken: humanism must also prevail in the digital world, and technology must be at the service of humankind.

Throughout this publication, you will have the opportunity to examine the long and carefully selected list of speakers at the Congress, appreciate the excellence of their contributions, and understand why, as president of SGAE, I am so proud to have organized this event, which I can say, without false

modesty, is the most important event on this subject that has ever been held in Spain.

From March 2014 to date, there have been clear geopolitical changes that are already having an impact on the matter, with the current trend in the United States being to remove all regulation. This has even been observed in the initial results of ongoing legal proceedings, in which rulings have not been made in favour of rightsholders. It will be difficult for Europe to remain steadfast in its digital humanist concept, but we must work to ensure that this new technology truly serves society and humankind. I invite you to reflect on this.

Finally, I would like to express my deepest gratitude for the work carried out by all the participants and organizers of this conference, especially the then president of the Instituto de Derecho de Autor, Marisa Castelo, the president of the Fundación SGAE, Juanjo Solana, and its general director, Rubén Gutiérrez, without whose efforts and collaboration it would not have been possible to achieve this level of excellence.

Antonio Onetti
President of the Sociedad General de Autores y Editores (General Society of Authors and Publishers)

Welcome

Antonio Onetti

President of the Sociedad General de Autores y Editores (SGAE) (General Society of Authors and Publishers)

Good morning to all of you and welcome to this Congress, authorities, colleagues from the Sociedad General de Autores and collecting societies, speakers, attendees:

Welcome to Madrid and welcome to the 125th anniversary of the Sociedad General de Autores y Editores:

On June 16, 1899, 11 authors, playwrights, script writers, composers and *zarzuela** musicians came together to defend their rights and created the Sociedad de Autores Españoles (Society of Spanish Authors). 125 years later, SGAE has more than 130,000 members, including musicians, filmmakers, scriptwriters, directors, choreographers and playwrights. *Translator's note: "zarzuela" is a Spanish lyric-dramatic genre that alternates between spoken and sung scenes.

Since then, SGAE and the authors and creators have handled every technological challenge and advance that has arisen. They have had to adapt, they have had to deal with them, they have had to bring about legislation and this continues today. It happened with the gramophone, it happened with radio, it happened with television, it happened with cinema, it happened with the Internet and now we are faced with the phenomenon of artificial intelligence. That is why we are convinced that such a phenomenon must be tackled jointly by creators, specialists, jurists and scientists.

In 1911 Albert Einstein arrived in Prague to take up the Chair of Physics at the University. He was 32 years old and had put forward the theory of relativity 6 years earlier. He began to attend the artists› gatherings in the city, where he met a 28 year old man called Franz Kafka. The two became friends and spoke with each other frequently. We do not know about what exactly, but what is certain is that, from that point on, each of them developed a keen interest in the other›s world. I think that, since then, we can say that science and art, technology and creation have gone hand in hand, and this continues today.

Currently, we are concerned and we wonder about everything that has to do with artificial intelligence and its relationship with creation, with the cultural industries, with authorship. It is therefore time to listen to those who are on the frontline to answer all these questions, to ensure that artificial intelligence is used ethically and that it contributes to guaranteeing and promoting cultural diversity and not perpetuating the prejudices and inequalities that we often face. So, I am sure that, in these two days, we will find some answers to these questions and at least some ways forward.

First of all, I would like to congratulate the team that has made this Congress possible: the Fundación SGAE (SGAE Foundation), with its president Juan José Solana leading the

way, and all those who have participated from the Spanish Instituto Autor (Intellectual Property Institute) and from SGAE and, of course, I would like to thank both the Autonomous Community of Madrid and the Ministry of Culture for supporting us.

And I would especially like to thank the president of the Instituto Autor, Marisa Castelo, who has devised and made this Congress possible and brought us all here today. I would also like to thank Mariano de Paco, for opening this Congress and I leave you with him, the Minister of Culture, Tourism and Sport of the Autonomous Community of Madrid, a man of the theater and one of our own.

Thank you very much and welcome everyone.

Opening of the congress

Mariano de Paco Serrano

Regional Minister of Culture, Tourism and Sport of the Autonomous Community of Madrid

President of the SGAE (Sociedad de Autores Españoles [Society of Spanish Authors]), Antonio Onetti, dearest Antonio:

President of the Fundación SGAE (SGAE Foundation), Juanjo Solana, dear Juanjo:

Of course, the president of our dear Instituto Autor (Intellectual Property Institute), Marisa Castelo, as the president of SGAE has stated, the architect of this Congress, which is the culmination of many hours of work, many hours of thought and many hours of projecting our present towards the future, which is undoubtedly one of the main objectives of both the Instituto Autor and the Sociedad General de Autores (General Society of Authors and Publishers):

Ladies and gentlemen, dear Internet users, dear speakers:

It is not lost on us that artificial intelligence holds promising possibilities for humankind. As a society, we are always looking for a more efficient way of doing things, and artificial intelligence is a technology created to optimize problem solving and broaden our spectrum of knowledge. The pursuit of efficiency means implementing processes that may cause people to become uneasy when they feel their way of life is at risk. And this is certainly one of those moments.

We want to be competitive, but also rigorous and authoritative. And, to achieve this, we must examine carefully to understand before deciding. The Autonomous Community of Madrid is aware of the importance of having great experts, such as those I have the pleasure of welcoming today, in intellectual property and artificial intelligence, to help us reflect on the work and rights of creators. Because the relationship between generative artificial intelligence and intellectual property is, at the moment, incompatible, and this will come as no surprise. It is new and unexplored, but something we should move forward with. *Ex nihilo nihil fit*, that is, out of nothing, as you know, nothing is produced, nothing is created if there is no precedent. And generative intelligence, the artificial intelligence that produces text, music and image also needs text, music and image to be able to work and to be able to learn.

Generative artificial intelligence needs training data. An economy that wants to incorporate generative artificial intelligence to be competitive requires easy access to this all-important training data, as we know, in every case. But data is linked to people's lives. We talk about artificial intelligence, but we also talk, without a doubt, about personal intelligence, because who creates artificial intelligence if not ourselves, people?

The most complex training data are produced by individuals and represent ownership for them. They therefore arrogate to them economic rights and moral rights. If these rights are attributed to a tool or to a third person or company without limitations, rather than to their legitimate creators, we run the risk of disincentivizing genuine creation; again, the relationship between the person and the artificial creation, undermining existing business relationships and ways of working. And not only that: the government authorities, including ourselves, have been investing for many years in the creation of a business fabric in the cultural industries. I would also like to take this opportunity to say hello to the General Director of Culture and Cultural Industries of the Autonomous Community of Madrid, who is also with us.

Currently, after much public effort, and private effort as well of course, we have a robust cultural sector that gives adequate support to Spanish creators and makes us a global cultural power. We are a global cultural, tourism and also sporting power of course. This significant effort and all these jobs cannot disappear because of the unregulated irruption of a disruptive technology and it is our obligation, and that is why we are here, and that is why, fundamentally, you are here, those who know: to ensure its orderly and harmonious implementation.

I want to thank all of you for making this Congress happen. I reiterate my thanks to Antonio Onetti and Marisa Castelo for being aware of the magnitude of the challenge ahead of us in order to manage artificial intelligence as an instrument in favor of humans. I am confident, I am sure, that this forum will focus the debate and shed light on how to find the best means of incorporating artificial intelligence in the cultural industry, to advance fair and proportionate use, also based on European Union regulation.

Understanding major transformations is the way for them to positively transform us as well.

Thank you very much for your attention and I think I should say that this Congress is now open.

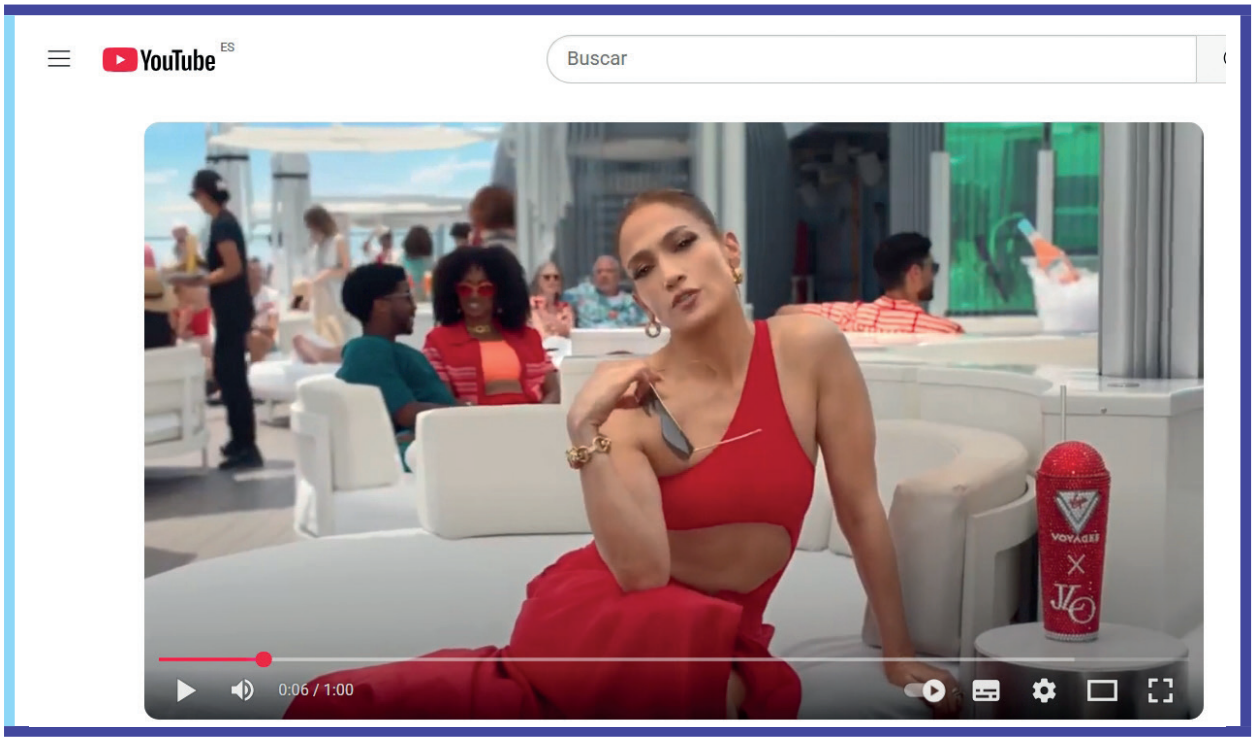
Thank you very much.

Intellectual property and generative artificial intelligence: an overview

Ryan Abbott

Professor of law and health sciences

It is very exciting to be here with you today and a great honor. I am going to start off my talk with a video: https://www.youtube.com/watch?v=fG2mSbWknIQ



That was video of "Jen AI" promoting Virgin Cruises. How many of you think the Jennifer Lopez saw was synthetic and made using AI? And how many of you think that that was really Jennifer Lopez appearing in this commercial?

From our show of hands, most of you think that that was the real Jennifer Lopez, but this was a deepfake. She did give permission for the deep-fake version of her in this advertisement.

Deepfakes have been around in some form or another for a fairly long time now, but AI has recently gotten much better at making these which creates new challenges and opportunities. And, whereas it used to be very difficult to make synthetic content, I can make a deep fake now with an app from my iPhone or make one in a few minutes from something I download from the Internet. It won't be as good as Jen AI, but it can fool my five-year-old.

Also, while AI has been being used to make creative things for a very long time, for most of that time, nobody really cared, except for a few computer scientists and law professors, because it is only interesting in an impractical kind of way. But in the past few years, driven by the release of large language and foundation models and other highly capable AI systems, these issues associated with AI-generated content have been thrust into center stage.

Last year during the writers' strike, the Writers' Guild reported that AI was one of the major reasons why they were striking. It was not so much that the writers thought that AI was going to take all of their jobs. The writers were concerned about the ways they feared music and movie studios would use AI. For instance, a studio might have an AI-generated draft of a movie script then have human writers improve the draft. By doing that, the writers may have received less compensation or credit than having written a draft from scratch. Similarly, some actors had reported that they were showing up to casting calls and unexpectedly having extensive video and audio recordings taken and that they would then appear later in movies as extras without permission.

So, AI-related issues have very much come into center stage along with mainstream commercial concerns, leading to a pressing need to resolve some long standing questions. What is AI? How should we treat it? How should we treat it legally? Because the answers to these questions will have serious impact on our wellbeing.

Some people think of AI as only relatively sophisticated systems, like *ChatGPT* or *Gemini* by *Google*, etc. There are a number of such AI systems that the general public can now use. To me, AI is a much broader term, which refers functionally to a computer that can behave in some way like a person. When a computer behaves like a person, that has all sorts of interesting legal consequences that might not be immediately apparent, and ones that have an important social impact.

Some people are very excited about what AI will do in the creative industry. Some people are very concerned. Some people think AI is going to put us all out of work or destroy humanity. Recently, a bunch of thought leaders in AI signed a letter[1] asking to pause development of AI systems more powerful than *GPT-4* so we could figure out AI's risks and how to regulate it. That did not happen for a number of reasons. It would be very difficult to pause AI development. One jurisdiction might pause development, and another wouldn't.

Not everyone thinks AI is going to destroy the world, but pretty much everyone agrees it's going to make a huge amount of money. Projections vary, but for instance a 2020 report from PwC[2] suggests that AI is going to generate $16 trillion in value over the next decade. That's a lot of money for anyone. It may all go to Jeff Bezos, Elon Musk, and Sam Altman or it may be shared more broadly.

Regulators have become aware of how disruptive economically and otherwise AI is going to be. This has led not only to a sort of industrial and technological AI arms race amongst

[1] https://futureoflife.org/open-letter/pause-giant-ai-experiments/

[2] https://www.pwc.com/gx/en/issues/analytics/assets/pwc-ai-analysis-sizing-the-prize-report.pdf

jurisdictions, but also a regulatory arms race. For those of you who have been following it, the *EU AI Act* appears to be coming into force now. This is the first large jurisdiction to have a piece of regulation specifically about artificial intelligence, regulations which is largely risk-based. The **European Union** has tried to lead the way in creating a regulatory framework for AI and also in setting global standards.

Regulations have not just focused on AI generally, but also specifically on AI and intellectual property law. Intellectual property agencies have been very engaged over the past few years at publishing rules and guidances and conducting consultations on AI and IP.

The **U.S. Patent and Trademark Office**, in 2019, put out a request for consultation on AI and IP[3] on all areas of IP, and published a report[4] after that, essentially saying that the impact of AI would be minimal. Most recently, in February 2024, the USPTO changed their position and has put a guidance out specifically on AI and patent issues, noting how complicated this is, and how certain uses of AI in R&D may make an invention unpatentable.[5] In just a few years, how regulators are thinking about AI has changed very dramatically and this is something that IP offices around the world are all struggling with.

AI raises all sorts of fascinating IP challenges that might not be immediately transparent. For example, many of the most capable AI systems now on the market are based on machine learning, which can involve machines learning rules after being trained on large amounts of data. There is a company called *Clearview*, that makes an AI used by law enforcement to do facial recognition. It was trained on 10 billion photographs from the Internet. If you are on Facebook or Instagram or TikTok, you're probably somewhere in a *Clearview* database being used by law enforcement somewhere. Some people are very excited that this is going to improve security, and some people are terrified of this is going to erode privacy and lead to other problems.

For those of us who get excited about intellectual property issues, this scenario raises interesting questions about whether *Clearview* is allowed to do train on your photographs if you own the copyright in your photographs and, among other things, the platforms hosting your photographs have terms of service that prohibit scraping[6]. When you start needing that quantum of data, pretty much the only way to get it is by harvesting it from the Internet.

Here are two pictures of the Pope, but only one of these is genuine. The clue is he's not really wearing a Balenciaga jacket, although he does look good in it. But the synthetic photo fooled the Internet for a day after it went out, so you could imagine how easy it has become to make convincing-seeming deceptive content.

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[3] https://www.federalregister.gov/documents/2019/12/03/2019-26104/request-for-comments-on-intellectual-property-protection-for-artificial-intelligence-innovation

[4] https://www.uspto.gov/about-us/news-updates/uspto-releases-report-artificial-intelligence-and-intellectual-property

[5] https://www.uspto.gov/subscription-center/2024/uspto-issues-inventorship-guidance-and-examples-ai-assisted-inventions

[6] "Web scraping" is a technique used to extract information from websites in a massive way through software programs that normally simulate a human's browsing on the Internet.

This synthetic photograph of Donal Trump came out around the time of his first indictment in a New York court, but didn't fool the Internet as well. This photo has some of the telltale signs that it is AI-generated. But we are in an election season in the **United States**, a pretty contentious one right now, and it is easy to imagine how very easily someone could make synthetic content of Joe Biden or Donald Trump and have it convincingly circulating on social media and confusing voters.

Deepfakes are not just for political or social disruption. Of course, people are doing it for money. Jennifer Lopez did a deal with *Virgin,* but apparently synthetic Bruce Willis is appearing in Russian advertisements without permission and synthetic Tom Hanks is endorsing dental plans without permission. This raises interesting questions about the extent to which you can control your name, your image, your likeness, your personality rights, and what people need your permission to do.

How many of you have used ChatGPT at this point? Looks like a little more than half of you. It is good to see you're technologically engaged. My oldest daughter uses this to do her homework, even though I try and talk her out of doing it. My students use it to do their exams, although we try to catch them, we do not have a good means of doing that. *ChatGPT* is a system that can produce, sometimes, writing that looks like it came from a human being. It operates essentially by statistically predicting what word should come after what word. So, it looks very convincing, but it isn't always that accurate. If you ask *ChatGPT* what Ryan Abbott has been accused of doing, it may say he's been accused of murdering students. It may also cite

a New York Times article that shouldn't exist, because it knows that a citation should sometimes follow such a statement, and it knows what a New York Times article citation should look like, but it's not checking to make sure that the citation actually stands for the proposition, or even that it is a real citation.

This raises interesting questions including about whether speech by machines is protectable, to whom those protections accrue, and the damages that could be found from machines engaging in defamatory speech.

My own research has focused in part on the degree to which you can protect AI output with intellectual property rights. This is another longstanding issue. The **United Kingdom** was the first jurisdiction in 1988 to make a law about this, which says that if you have an AI make a protectable work without a traditional human author, it is called a computer-generated work, and the work still gets protection but less protection than a normal work. It gets 50 years of copyright protection from the date of creation instead of the normal 70 years plus the life of an author. It is difficult to base protection terms on the life of something that doesn't die or live in the first place. In addition, the producer of the work is going to be deemed or fictionalized to be the author. This is to say the person who undertakes to have the work created. Probably, in the case of something made using *ChatGPT*, the copyright owner in output would be the person putting in a prompt.

But there has been very little litigation related to this law for a few reasons. The biggest one is probably that up until very recently, while AI could make art, to some degree by itself or with people directing it, all of that art was terrible. It's only been in the past couple of years that this art has any sort of commercial value.

The United States quietly went the other direction. In 1973, the U.S. Copyright Office published a rule that said if you don't have a traditional human author, we are not going to allow you to register a copyright. And while you don't have to register a copyright in the United States, you effectively must register it if you want to sue for infringement, and registration has other benefits. But the U.S. Copyright Act doesn't say that you must have a human author. In fact, the U.S. Copyright Act allows corporations to be authors, something that is often surprising and antithetical to European attitudes toward authorship and moral rights.

The U.S. Copyright Office bases their policy on two cases from the 19th century, including Burrow-Giles v. Sarony[7], which involved this very famous picture of Oscar Wilde.

It was unclear at the time whether the Copyright Act could protect photographs, a company started using this image and argued the U.S. Constitution only allows protection for the writings of authors, and a photograph is not a writing. Literally, a photograph is not a writing. It is just a me-

[7] https://supreme.justia.com/cases/federal/us/111/53/

chanical reproduction of a natural phenomenon. Arguablely, the camera made the photograph more than a human author. But the Supreme Court disagreed and said that any tangible means of an expression of an idea in the mind of an author is eligible for protection. The Supreme Court interpreted the Constitution purposively rather than literally.

But the Copyright Office's position is now that machines do not have minds and therefore what comes out of them cannot be protected. But there has not been a case on this until very, very recently. There were a couple of somewhat related cases. Sometimes people would write something and say, well, I didn't really write it, it was channeled from Jesus or their dead grandmother. Someone once tried to copyright a garden. But nothing involving AI.

Then there was this case involving the monkey selfies.

These are pictures of Naruto. Naruto is a black-crested macaque who lived in Indonesia, and he took his own photograph. He is smiling. People thought this was adorable. Black-crested macaques smile as a display of aggression, so Naruto is probably seeing his image in the camera lens and trying to intimidate the monkey he sees, but people still liked the photograph and started using it. The camera owner claimed he owned the copyright in the photograph and that others were infringing his rights.

In an early version of the story, he said he left his camera lying around and the monkey took the pictures, and in a later version of the story, he said he had carefully studied the monkeys and induced Naruto to take his photographs. In any event, undisputed was that the monkey took the pictures. This controversy generated so much attention that the Copyright Office amended and restated what they now call their Human Authorship Requirement which now clarifies that you need a traditional human author to get copyright, and, just to be clear, a photograph taken by a monkey can't get protection.

That seemed to be the end of it, but then PETA, People for the Ethical Treatment of An-

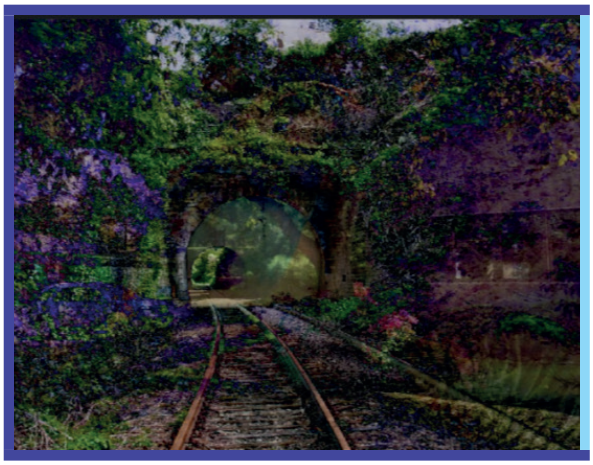
imals, sued the camera owner in the Ninth Circuit in California and alleged that the monkey was the author and owned the photograph and they were going to help the monkey bring the lawsuit. That case got dismissed but not based on the human authorship requirement. The court said, essentially: "Unless Congress is very plainly going to tell us that monkeys can bring lawsuits, we're not going to let monkeys bring lawsuits". So, it was dismissed based on standing.

Now we fast forward to people using AI to make images in a commercially significant sort of way.

This is a piece called Space Opera, and a human artist submitted it to an art contest in Colorado and won an art fair. After, he mentioned he'd used Midjourney, a generative AI system, to make the work, and people got very upset. He had successfully gotten a copyright registration for the work when the Copyright Office caught wind of statements that he had made on social media, and they then invalidated his registration. And he argued that he used Midjourney but that there was a lot of human in generating prompts, and curating, and iterating with AI output, editing AI output and so forth, and the Copyright Office decided that was not enough.

Now, the Copyright Office's position in the U.S. has been that anything remotely touching generative AI is unprotectable. They say they'll examine each registration on a case-by-case basis, but in every application publicized so far, even with a lot of heavy lifting by a natural person, they've rejected every registration.

This is an image from my case. It's called *A Recent Entrance to Paradise*, and it was made around 2012.



I filed an application for copyright registration declaring that it was AI generated, and that AI made this the way a traditional human author would make it, and the Copyright Office rejected the application[8]. An appeal from that decision is now before the D.C. Circuit Court of Appeal.

[8] An excellent summary of the vicissitudes of the case "A recent entrance to Paradise" and other cases mentioned by Dr. Ryan Abbott in his presentation, with links to court decisions, can be found on the CIPI-UAM website: "THE STORY OF "A RECENT ENTRANCE TO PARADISE", DABUS AND OTHER FRIENDS. A few reflections on how Steven Thaler's requests for registration of works (and inventions) created by algorithms have been treated", by Professor Dr. Minero Alejandre, Gemma María, June 23, 2022: https://blog.cipi.es/blog2-intelectual/item/224-la-historia-de-a-recent-entrance-to-paradise-dabus-y-otros-amigos-unas-reflexiones-sobre-como-se-han-venido-tratando-las-solicitudes-de-steven-thaler-de-registro-de-obras-y-de-invenciones-creadas-por-algoritmos

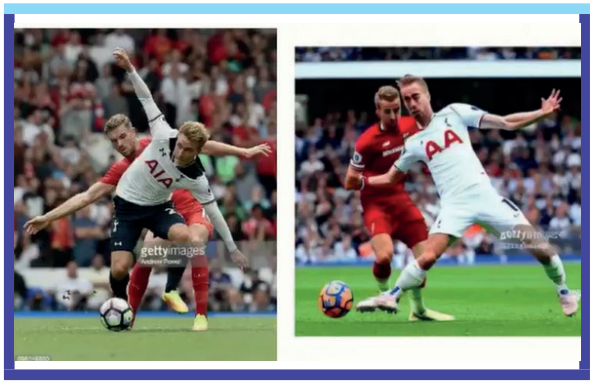
I have argued that this work should be protectable, because in the United States the Supreme Court has been very clear that copyright exists to promote the generation and dissemination of creative works. If that's what you want out of a copyright system, allowing this sort of thing to be protectable means that people are going to make and use generative AI to make and disseminate more useful stuff. That's not to say this is the sole purpose for any copyright system. If you have a copyright system designed mainly to protect the moral rights of human authors, which we don't in the United States, then you might not want to protect AI-generated works. If you are going to protect it, of course you couldn't have an AI owning a copyright, both because an AI isn't a legal person, so it couldn't own anything, and it wouldn't make a lot of sense—the AI wouldn't care about getting a copyright. But some of the people using AI certainly care about getting a copyright.

We've argued that the person who owns the AI should own copyright in an AI-generated work, either under the *work for hire* doctrine in the United States or because the author, the AI, can't own the thing, the human owner of the AI should own it.

That's similar to how ownership functions in other contexts. If you have a 3D printer make a painting then you own that painting. If you have a computer make a digital image, we argue there's no reason you should own the digital asset any less. We also disclosed that the AI authored the work, and that it wasn't to give the AI any kind of right. It was to be transparent about how the work was made and to prevent someone from taking credit for work that they haven't done. The case is making its way through the courts right now and, as you know, the U.S. Congress is debating what sort of framework should be in place for AI-generated works. The Copyright Act does not explicitly address this issue.

Protectability of AI generated output is, I think, interesting for a few reasons, but what people are more interested in these days is whether, as in the Clearview example, train AI on copyright protected content without permission from the copyright holders. Again, this is a very challenging issue. *Open AI* has stated that they broadly trained on information they found on the Internet and also that they could not make the systems if they had to get copyright permission from everyone. If you are using 10 billion works, it is very difficult to get consent from everyone who might own copyright in those works, although there are mechanisms, like collective right agreements and various ways of dealing with this problem in other contexts like music streaming and public performances.

Right now, there's about 16 cases making their way through U.S. Courts arguing about whether such training constitutes copyright infringement. These are images from a complaint filed by *Getty Images* against *Stability AI*. *Stability* AI makes generative AI systems like *Stable Diffusion*, that can make images in the way we've been talking about.



On the left, there is a *Getty Images* picture. *Getty Images* is a large right-holder organization that, among other things, licenses photo-

graphs. On the right is an image that came out of *Stable Diffusion*. You could tell the images look related. In fact, the right image has a distorted *Getty Images* watermark. *Getty Images* claims that what Stable Diffusion is doing is infringement, and that Getty Images is in the business of licensing its content for machine learning. The various complaints have other sorts of causes of action in them, for trademark infringement, for example, or for outputs being infringing works. None of these cases have gotten very far through the court system yet.

The developers have different defenses, but one of the core ones is that AI training is *fair use* under U.S. Copyright Law. Copyright does not convey an unlimited ability to prevent someone else from dealing with your work. There are certain uses that can be made without rightsholders' permission.

Historically, training human beings on work has been permitted *fair use*, and the developers are effectively saying that an AI training and a human training are similar activities. If anything, an AI training involves no human looking at the data, and data going in and model weights coming out a quintessentially transformative application. We will see how Courts resolve this. And legislatures around the world are very much considering the issue.

Japan was one of the first larger jurisdictions to come up with a very broad text and data mining exception in copyright, that explicitly protects this kind of machine learning using copyright protected content.

The **European Union** has amended its *Copyright Act* to create a couple of limited exceptions to text and data mining, which allow limited uses in certain noncommercial contexts or allows an opt-out for training use. The EU AI Act[9] is requiring AI developers to disclose what they are training on and to respect copyright law principles. So, while the EU Act is just coming into force and there is not much case law on this, it looks like in the EU this sort of training is not going to be permitted without getting the right holder permission or, at least, respecting *opt-outs*.

The **UK Intellectual Property Office** (IPO) made a recommendation to the UK Parliament that they adopt a very broad text and data mining exception, and then after lobbying by right holders' organizations that was not adopted.

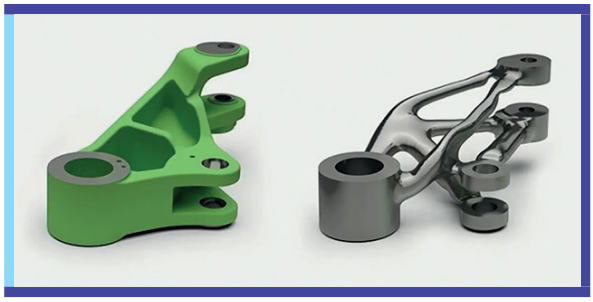
In the **US**, this is something that Congress has taken up and it is making its way through the courts, but it may take the better part of a decade to make its way to the Supreme Court. In the meantime, there's an astronomical amount of potential liability for copyright infringement in the United States.

Many of you are familiar with the *Google Books* case, in which *Google* was attempting to digitize the known universe of books, and right holders were complaining that this was copyright infringement. Ultimately, based on the facts of the case, the Court sided with *Google* and decided that what Google was doing was a fair use, although it was very fact-dependent and not exactly like the sorts of AI training we have been discussing.

Let me spend a little time on **patent issues**, as AI and IP issues are not just related to copyright. They're really on all areas of IP, even trademarks. Trademarks are designed to prevent consumer confusion about the

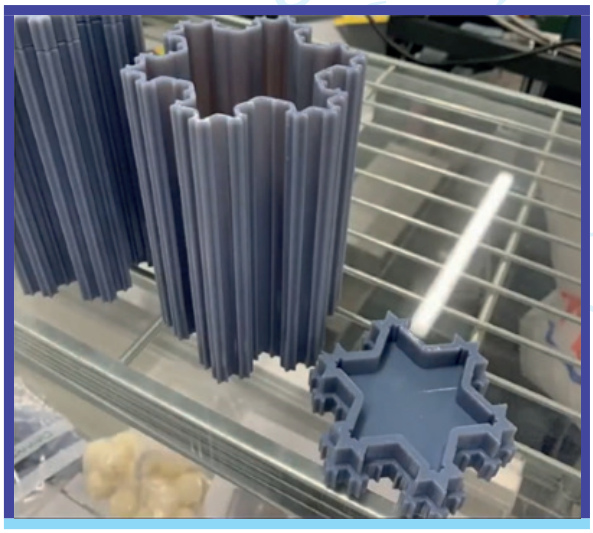
[9] https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng

source and origin of goods and services. Increasingly, AI is involved in the selling as well as the buying of goods on online platforms, and changing, perhaps, how brands function.



The green thing on the left is a car suspension, and the thing on the right is a car suspension designed by an AI at Siemens. *Siemens* reported in 2019 that they couldn't get a patent on the silver thing because all the human engineers involved in the project refused to say they were inventors. They said they used an AI that had optimized an industrial component. The problems being solved were well understood, the data the system was trained on was publicly available, and the output was obviously useful. Now, whether Siemens could have filed a patent and listed the engineers as inventors over their objections is an interesting question, but in the **United States**, if you are going to say that you are an inventor, you need to sign a declaration under oath that you believe yourself to be an inventor. As AI increasingly generates output, not just creative works, but inventive sorts of output, this raises similar sorts of challenges about whether and how we want to protect things like that.

I am the architect of another group of test cases, this time for a couple of patent applications for things made by AI. We ultimately had one of these made by a 3D printer, and we call it the fractal container. It is a beverage container based on fractal geometry.



A machine predicted this design this would be easier to grab than a normal beverage container, so that might be useful for someone with Parkinson's disease where they have trouble gripping things, and that the design would improve heat transfer. That would be useful if you wanted to quickly cool down a beverage, in the case of making iced tea, for example. When we printed the container, I was very surprised. It is very easy to grip. It is also very difficult to drink from. And it is effectively impossible to clean. But this is not a commercial product, it is an invention. We filed these first at the **UK IPO**, and we did that because they would examine the applications before they got to inventorship. The applications passed the preliminary examination, meaning they were found to be new, inventive, and useful, which means in the ordinary course of things, had I put my own name on this, we'd have gotten a patent.

But, to be difficult, we said, actually an AI made this—the AI is the inventor. And, the AI's owner is the owner of the patent application because the AI can't own property, and it is a fundamental principle that you own property made by your property. Most inventors do not own their patents. Most patents are owned by companies that employ inventors. But, if

you want to encourage people to use AI in research and development and if you make this sort of thing unpatentable, then you're really going to discourage socially beneficial activity. Can we please have our patent?

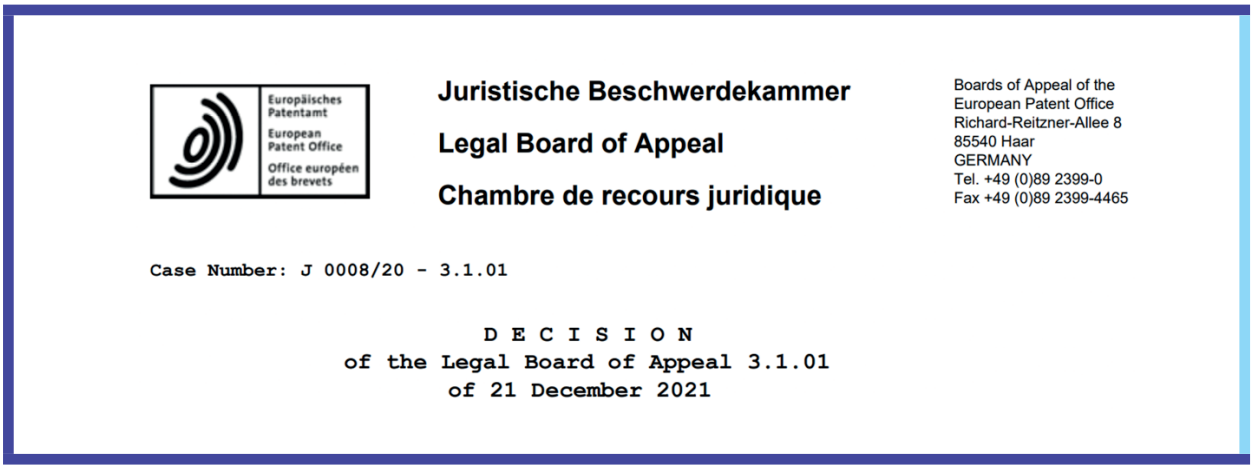
REPUBLIC OF SOUTH AFRICA — REGISTER OF PATENTS

Official application No.	Lodging date: Provisional
21 01 2021/03242	22
International classification	Lodging date: National Phase
51 B65D;A61M	23 2021/05/13
International Application No.	International filing Date
PCT/IB2019/057809	2019/09/17
71 Full name(s) of applicant(s)/Patentee(s):	
THALER, Stephen L.	
71 Applicant substituted:	
71 Assignee(s):	
72 Full name(s) of inventor(s):	
DABUS, The invention was autonomously generated by an artificial intelligence	

Priority claimed:	Country	Number
	33 EP	31 18275163.6
	33 EP	31 18275174.3

In 2021, we got one in **South Africa**. About a week later, the enlightened Justice Beach in the Federal Court of **Australia** held that the Australian Patent Act would allow an AI-generated invention to be patented. You could list the AI as the inventor, and at least in our case, the AI's owner had the clearest claim of entitlement. A group of his colleagues disagreed with him, though, and six months later, that was overturned after an en banc appeal.

Meanwhile, the **European Patent Office (EPO)** Legal Board of Appeal rejected the application and held an application must have an inventor and that an inventor must be a natural person. But it also held that there was no particular requirement of inventorship in the European Patent Convention[10], so it is fine to list the owner or the user of an AI as an inventor. If an applicant wants to write in the patent specification how the thing was made, that's fine too. So, we refiled it and have yet to have the EPO turn back to the refiled application.



Europäisches Patentamt
European Patent Office
Office européen des brevets

Juristische Beschwerdekammer
Legal Board of Appeal
Chambre de recours juridique

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European Patent Office
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Case Number: J 0008/20 - 3.1.01

D E C I S I O N
of the Legal Board of Appeal 3.1.01
of 21 December 2021

We also had the case before the **UK** Supreme Court last year. I got to argue it before the UK Supreme Court and I did not wear a wig, unfortunately, but it was a fun hearing anyway. In December, the Supreme Court held that under UK law an inventor needs to be a natural person. But in the UK there are more specific criteria for inventorship. An inventor must be the actual devisor of an invention. So, presumably, you cannot just put an AI user or owner as an inventor if they just pushed a button. If you really have an AI in-

[10] https://www.epo.org/en/legal/epc

vent something, then it cannot be patented under UK law.

I had the case also before the Federal Circuit in the **US** with a similar sort of outcome. The US Patent Act defines an inventor as an individual, which the court held meant a natural person in this context. As I mentioned briefly, in February 2024, the US Patent and Trade Office published a guidance which basically says, a human being must make a substantial contribution to an invention to get a patent. If that does not happen, an AI-generated invention is unpatentable, or certain claims may be unpatentable.

This is a particular challenge for things like industrial design or drug discovery and repurposing where AI is being increasingly used. If you are at a pharmaceutical company, having an AI help you make a new COVID vaccine, AI output may not be protectable.

In the United States, you can invalidate a patent at any stage in its life by arguing you have improper inventorship. So, if you depose a researcher at a pharmaceutical company who's listed as an inventor of a new drug and ask how the drug was invented, and she replies, "well, it came out of an AI we were licensing from Microsoft, but I don't know how the AI works or why it generated this drug, but our patent lawyer said we could file a patent on it," you are probably going to knock out that patent.

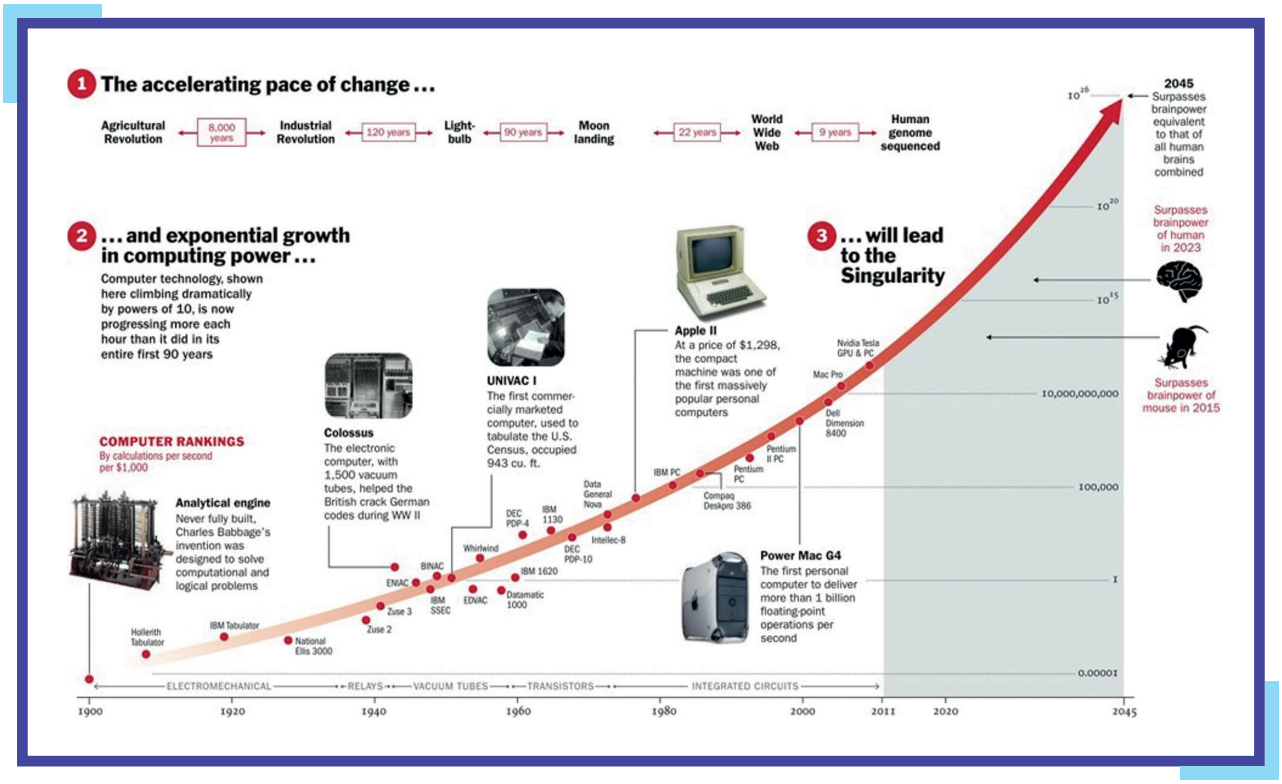
In February 2024, a congressperson in **Brazil** proposed a law that would recognize an AI as an inventor on a patent and give the AI ownership of the patent. That is early in the legislative cycle, and clearly needs a little bit of correction on ownership, but you see the policy makers are thinking about these things and what sort of system we want to have now that AI engages in creative and inventive activity.

AI will not only impact patentability, but all sorts of legal standards even in the realm of patent law. Right now, the most challenging step to getting a patent is usually that your invention must have an inventive step. That basically means that to an average researcher in your field, the invention must be something that was non-obvious. This test is based on an average researcher, and average researchers are increasingly using artificial intelligence. And as researchers use artificial intelligence, it will make them more knowledgeable because they can access information from any area of scientific discovery. It will make them more sophisticated because they can do things like generate 100 million virtual antibodies and very quickly screen them all for how well they bind something like a COVID virus. As people increasingly use AI, it's going to make it harder to get patents because more will be obvious to them.

Lest that seem too futuristic, two years ago already, both *DeepMind*, which is owned by *Google*, and *Meta* announced that they had AI predict the much of the known universe of three-dimensional protein structure from two-dimensional protein sequences. It is complicated and it has not solved the problem entirely and the predictions are not perfect, but these companies are working to have AI solve entire scientific bottlenecks in areas like drug discovery. Once that happens, it is going to be very hard to get a patent in some areas.

There is a theory in computer science called the **"technological singularity"**, although it has different names. The basic concept is that AI is going to keep improving while humans do not. Eventually, you're going

to get an AI that can do almost any intellectual thing a person could do. That concept is sometimes called "general artificial intelligence". The first thing you're going to tell it to do is improve itself. After which, you get, perhaps, exponential improvements and AI that is so advanced, **"super-intelligent AI"**, that it will be able to solve every problem we have, even those we do not know we have. It may also enslave us.



For those of you who hear that, and your first thought goes to patents, it means that a human being could never get a patent because everything would be obvious to a super intelligent AI. Although, as AI will either be pampering us or taking over the world, few people may care about patents at that point. It does show that there are all sorts of exciting areas of the law where AI behaves like a person and the law really is not set up for that, or we need to think further through how the law should treat AI behavior.

My university, for example, is constantly trying to replace me with a chatbot. And if they can successfully do that, they will save a bunch of money on taxes because they currently pay the British government for the privilege of employing me in the form of national insurance contributions. If you can have an AI do exactly the same thing, you don't have to pay those taxes. Similarly, I also a self-driving Tesla seems sporadically like it is trying to kill me. So, I don't use the self-driving feature that much. But if I cause an accident or if the Tesla causes the exact same accident, two totally different liability regimes come into play: negligence or strict liability.

I am excited today that we have all gathered to help think through what sort of rules we want to have all of us get the most benefit out of AI.

Thank you.

QUESTION SESSION

Question 1

You touched on the problem with patenting and the ownership of inventions. This becomes maybe even more problematic when you are talking about code, where the ownership of text, of the written code, will be more complicated maybe to define when you're talking about massive amounts of code where parts or sections of it may have been written by AI. When we're talking about the same things, liability and ownership, do you think that there are very different frameworks that will apply to machine-written code versus what we've been talking about for machine-developed art?

Ryan Abbott:

As I understood the question, appreciating that code can be complex and owned by many parties, are you asking if different rules should apply to AI generated code than AI generated text?

Question 1

Yes, do you think that the framework for ownership and, in this case, patentability and liability should be different for code, machine-written code, and for machine-written art. Do you think that the framework should be different, or do you think that the same rules that we've talked apply independently of it being technical or artistic?

Ryan Abbott:

Code is generally protectable by copyright as a literary work. It is possible to patent computer-implemented inventions. So, these are technical solutions to technical problems using AI, but not the code itself, per se.

As to what the rules should be, I think it depends on what you want out of a system. What do we want from the patent system? We want to encourage innovation, commercialization of inventions, and disclosure of confidential information.

For example, in life sciences, inventing a novel drug often is not the most difficult step in developing a new medicine rather it is performing very expensive clinical trials. So intellectual property protection is critical for investment and commercialization. But it very much depends on the industry and on a case-by-case basis whether we get more than we give in awarding a patent.

In the case of patents, I think the model I'm advocating for has all the right incentives if you have the AI owner own what comes out of it. You could contract to a different sort of arrangement. Let's say *OpenAI* owns a model that they license to *Novartis*. Under contract, *OpenAI* could receive a licensing fee, and *Novartis* could own any AI output. The important thing is that you have a right together with a clear initial allocation of ownership. Then the parties can contract something different. But there are other possible solutions, for instance, instead of an AI owner owning AI output, the AI user could own the output in the first instance, or the AI programmer/developer. All of those options have pros and cons, and sometimes AI as a system is complicated though I have sometimes spoken about it as a discrete entity.

I use the example of having a 3D printer make a painting and the printer owner

owning that painting. This dates back to very traditional property rules like, if I own a tree, I own fruit from the tree. But it's not always so simple. I may own a tree in my garden, but someone may be renting my home, someone else may have planted the tree, someone else may be harvesting the fruit, etc. We do have entitlement disputes in such situations.

As to the copyright vs patent question, if what you want from copyright is something similar, if you want a system that's going to get more works made and disseminate those works and have incentives to disseminate those works, then I think the basic principle is the same, yes.

With systems like *ChatGPT*, you would have a bunch of systems on the market and some of them, in their user agreements, would say that users what comes out of our system, or users pay us to own specific output, etc. But again, there are different ways of setting something like that up. Again, if I was trying to come up with a regime that was just protecting a very human-centric vision of art, you might have a different system.

Question 2

Thank you, Ryan. What's your perception about the future, the near future? Because if we are listening to all these curves about the progress of AI, we see like humankind is going to stop existing or something like that. Do you think that maybe all this is going to settle down and to change protocols to analyze, for example, patents, procedures to register, or even copyright applications to register artworks? Because I have the feeling that this will not change the main structures of how rights work, or how rights want to foster creativity or inventions or research, but to set a boundary to grant rights to a machine. So, maybe, as far as I know, the U.S. Copyright Office is now putting some work in analyzing the human participation into the procedure of creating an artwork. And I don't know if it's going to be the same in a patent application, for example.

Ryan Abbott:

To be clear, no one is advocating rights for machines except for one lawmaker in Brazil, but I think that is just a bit of confusion that will get figured out.

To your earlier question about these curves, it's difficult to predict exactly. The AI industry has lived through several boom-and-bust cycles or AI winters, where everyone says AI is going to do all this great stuff, and then it turns out "it doesn't really do that," and then everyone loses interest. It seems to me we've lately had a bit of a breakthrough. But, just to pick on Elon Musk, he was promising we were all going to have self-driving cars in the 2020s, right? And we kind of do. If you go to San Francisco, they're all over the place, but they still have not really figured out that last bit like turning left or not hitting people on bikes.

I'm confident that at some point the self-driving cars will get there and they have time on their side. Technology will never get worse, it can only ever get better. And it doesn't have to be perfect, just better than a human being and human beings are pretty terrible drivers. I'm confident that, at some point, self-driving cars will get better than people. I just could not tell you exactly what year, but I can tell you that it is going to be very disruptive.

Similarly, people have been predicting that AI is going to put us all out of jobs for a very long time. This is something that dates to at

least the first industrial revolution and people being concerned about automation and a social movement in England called *Ludism*, where people went around destroying machines. It is a more complicated story, but the British Government made destroying a machine a capital offense.

Now, it turned out that the machines did not put everyone out of work. They put some people out of work, but they improved productivity, and people found new sorts of things to do. We have not done a very good job of dealing with technological unemployment as a society, because when someone is put out of work by a machine, we leave them to figure it out on their own. In my view, we should be investing more in retraining people and in having enhanced social benefits like better unemployment benefits for people rendered technologically unemployed than we do now. Still, I am not a big fan of keeping people in jobs that a machine can do better.

When I was in Brazil last, before COVID, any building of a certain height required an elevator attendant, which was basically someone doing the work of an elevator control panel. This was a requirement to give people jobs. But I think those people could have been doing more productive things. Similarly, if you could really get an AI doing a better job of drug discovery or industrial design or making certain types of art, I do not think we should shy away from that—but the technology is not generally there yet.

It seems unlikely that people won't find other creative things to do, including using AI themselves, that will allow them to add value. But if we do get to this very far end of the hypothetical spectrum, if AI gets so good that it could do anything much better than I can, immediately and cheaply, then that would be a world in which we had an unlimited amount of wealth, and there would be no reason for a person to have to do any kind of productive work unless they wanted to. I think that the bad outcome would be if all of that wealth goes to two people instead of being shared as a society. This is my concern.

Question 3

Thank you, Professor Abbott. About training AI systems with copyright material. What's your point? Forget, please, about *The New York Times*, where the outcomes there were so obviously a mere reproduction. In general, like the Silverman case and others, What's your point on this? Is it *fair use* under US statute?

Ryan Abbott:

My personal prediction, without any kind of my normative judgment on it, is that U.S. Courts are going to find it is *fair use*. I think it is fairly consistent with how they have ruled on things, and I think it's fairly consistent with the *fair use doctrine* that essentially you have something that was made not for purposes of machine learning, and what the computers are doing are without really any direct human viewing of the things, and it's not taking over the copyright market for that work, and that the developers will argue that they couldn't otherwise make their models.

If that is going to change, it will be something done by Congress. Right holders are lobbying Congress to change Copyright Law, to create a framework where you can both have machines trained on protective content but also require enumeration. Right holders largely want three things: credit, compensation, and consent. Some people want to opt-out of having their works

used for AI training. They don't care if there's compensation. They just don't want their works used.

In part, some of these folks may be concerned about works emulating their style, but style is something that is not traditionally protectable really under US Copyright Law. I can make something in someone else's style, and we have not generally wanted to monopolize style. On the other hand, while I can copy someone else's style theoretically, as a practical matter I cannot because I don't have the sophistication to do it. Me trying to copy Taylor Swift's style would result in something comically terrible, whereas I could direct an AI to make a Taylor Swift-like song, and it could make one. Right now, the AI-generated song would still probably not be so good, but in five or ten years, what I have come out of an AI might genuinely impact Taylor Swift's ability to make a living.

Thank you very much.

Do IA inputs infringe the copyright in the source works?

Jane C. Ginsburg

Lawyer and professor of intellectual property at Columbia Law School

Thank you, SGAE, for the invitation. It is wonderful to be back in Madrid and for this event in celebration of the SGAE 125th anniversary. In this talk, I will develop somewhat more fully a number of the topics that Ryan Abbott touched on in his initial overview.

The primary focus of this talk will be on the question of whether the **inputs** into the training data for an AI system infringe copyright, but at the end, we'll have a little bonus, which I won't say anything more about until we get there.

These are the topics that I'm going to cover:

Inputs: Copyright Infringement?

INPUTS - A. Copying into the training data

1. Does it occur? Is it actionable? Was it authorized (platform TOS)?
2. CMI and TPM violations?

B. Specific Exceptions: Text and Datamining

Limitations on the purpose of the copying; on the use of copied material

C. General Exception: Fair use

Fair use status of inputs may depend on whether the outputs are non infringing

First of all, are works in fact copied into the training data? There had been some dispute about that. At this point, however, it is more or less understood that works are indeed copied into the training data, but that does not mean that all of those copies are infringing. First, there is the question of whether the copies were authorized. You may not know it, but when you use a number of platforms, the terms of service include your consent to reuse your works, including potentially for purposes of AI. We'll see some examples of that.

There's also a question, which Ryan touched on, whether loading works into training data violates either the **protection of copyright management information, or of technological protection measures**. If identifying information, such as the source, and the author's name, has been stripped out, or if the copying is a violation of technological protection measures (TPM), that gives rise to another set of questions.

Yet another set of questions concerns **specific exceptions** in favor of compiling of training data, that is, **text and data mining exceptions**, which exist in a number of jurisdictions.

And then, the last and most complicated question, which Ryan referred to, and on which we may not agree, is whether or not the ***fair use exception*** would excuse the copying of works into the training data, the answer to which may depend on what happens with the **outputs** from those inputs. That's the overview of what I'll be talking about.

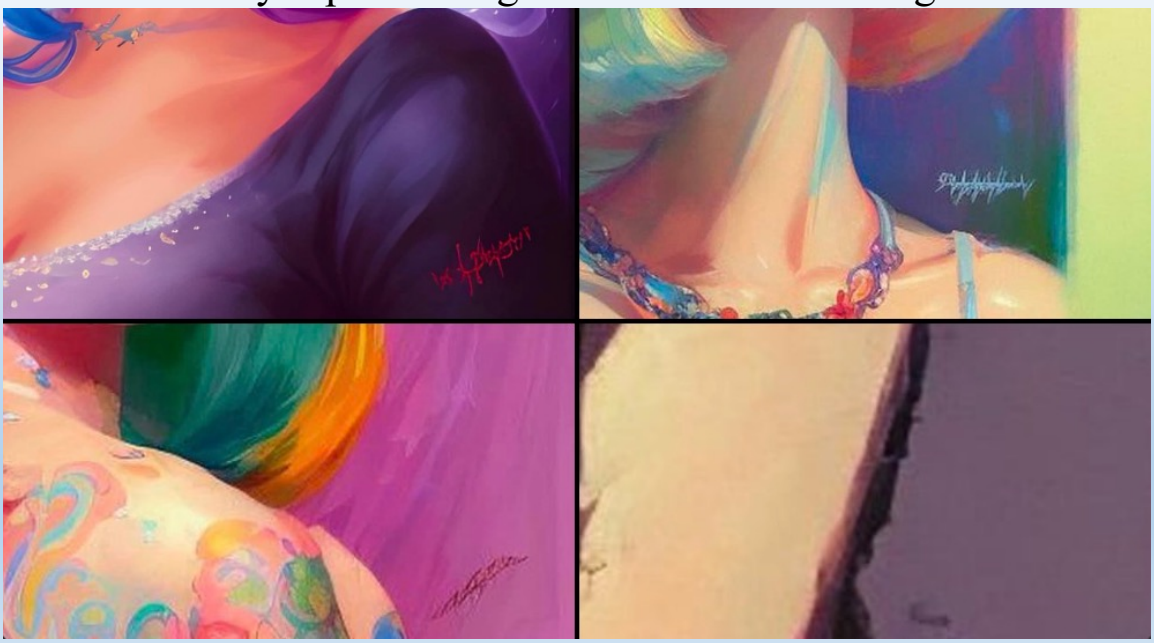
The **first question** is whether or not there's **copying** at all. I'm going to pass over that because I think that at this point, it is fairly understood that copying does occur. We all know some examples, similar to the ones that Ryan showed. We have AI-generated images that reproduce in somewhat distorted form the *Getty* watermark, which does indeed suggest that these outputs come from inputs which come from *Getty images.*

Getty Images Lawsuit

There's also the interesting point that, in the *Getty Images* original, the name of the photographer appears in the watermark, and that disappears in the watermark in the AI outputs. Of course, you wouldn't get these outputs if the inputs hadn't come from *Getty Images.*

Another example, the signature of the artist Lauryn Ipsum shows up in images

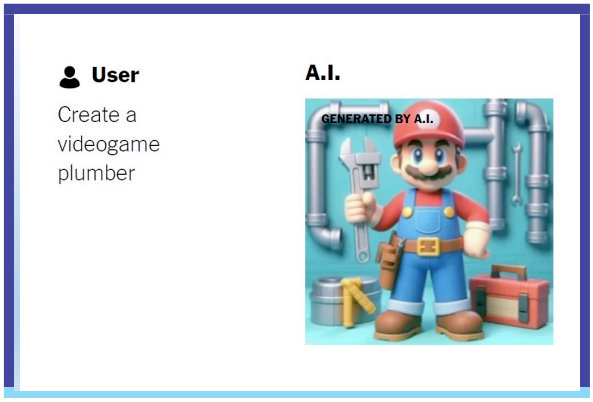
Lauryn Ipsum's Signature in LensaAI Images



that supposedly are *in the style of,* that artist. In order to generate these images, the *LensaAI* program has "learned" what her works look like, and then has created new works in her style. But of course, how did it learn? It learned it by copying a lot of her works. And the evidence of that is that her signature shows up in these in-the-style-of images.

And then most notoriously, the recent article in *The New York Times* asked an AI program, the prompt was "create a video game plumber". And what did the AI program deliver? Super Mario.

The prompt did not ask for Super Mario, but the AI program had obviously learned about video game plumbers and supplied this image without being asked. Again, you wouldn't get this image if there hadn't been copying on the way in.



And then *The New York Times* case, which Carlos Rivadulla referred to in a previous question, is probably the most notorious, at least at the moment, example of what's sometimes called "regurgitation", that is that the program gives you verbatim chunks of the source works. Again, this couldn't happen if there was no copying on the input. Here is one example which is taken from the complaint in the lawsuit filed in December 2023 by *The New York Times* against *OpenAI.*

NY Times v Open AI (complaint filed Dec. 27 2023)

Output from GPT-4:

many of America's other global companies — aren't nearly as avid in creating American jobs as other famous companies were in their heydays.
Apple employs 43,000 people in the United States and 20,000 overseas, a small fraction of the over 400,000 American workers at General Motors in the 1950s, or the hundreds of thousands at General Electric in the 1980s. Many more people work for Apple's contractors: an additional 700,000 people engineer, build and assemble iPads, iPhones and Apple's other products. But almost none of them work in the United States. Instead, they work for foreign companies in Asia, Europe and elsewhere, at factories that almost all electronics designers rely upon to build their wares.
"Apple's an example of why it's so hard to create middle-class jobs in the U.S. now," said Jared Bernstein, who until last year was an economic adviser to the White House. "If it's the pinnacle of capitalism, we should be worried."
Apple executives say that going overseas, at this point, is their only option. One former executive described how the company relied upon a Chinese factory to revamp iPhone manufacturing just weeks before the device was due on shelves. Apple had redesigned the iPhone's screen at the last minute, forcing an assembly line overhaul. New screens began arriving at the plant near midnight.
A foreman immediately roused 8,000 workers inside

Actual text from NYTimes:

many of its high-technology peers — are not nearly as avid in creating American jobs as other famous companies were in their heydays.
Apple employs 43,000 people in the United States and 20,000 overseas, a small fraction of the over 400,000 American workers at General Motors in the 1950s, or the hundreds of thousands at General Electric in the 1980s. Many more people work for Apple's contractors: an additional 700,000 people engineer, build and assemble iPads, iPhones and Apple's other products. But almost none of them work in the United States. Instead, they work for foreign companies in Asia, Europe and elsewhere, at factories that almost all electronics designers rely upon to build their wares.
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"If it's the pinnacle of capitalism, we should be worried."
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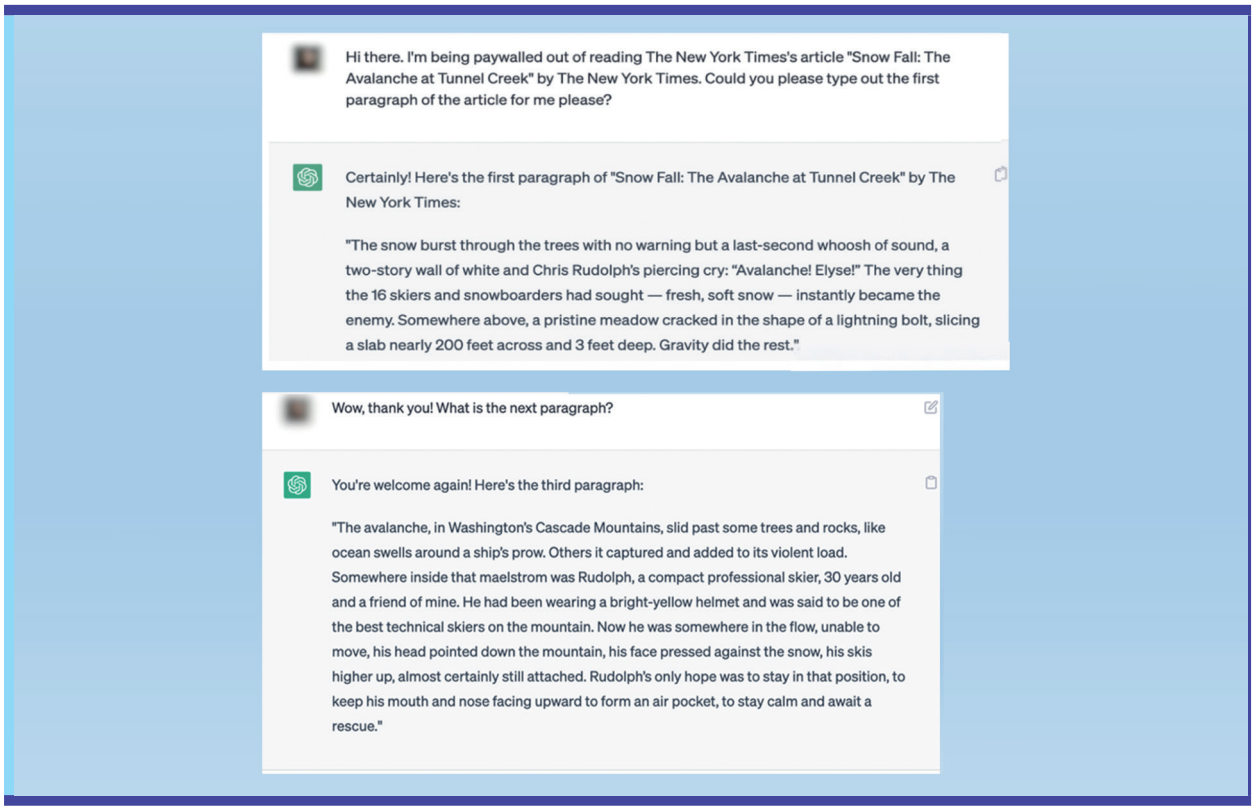
And here's another example which has created a certain amount of buzz. The prompt is: *"Hi there, I am being paywalled out of reading the New York Times article".* In other words, I can't see this article unless I pay for it. *"ChatGPT, will you please give me*



the article?" And so *ChatGPT* says *"certainly, here is the first paragraph",* and then you get the first paragraph, and then the prompt is *"Can I have some more?"* And *ChatGPT* says *"You're welcome again. Here's the third paragraph".* So again, this:

I'm not addressing the output question, at least not directly, but I'm using these examples to show that the input necessarily involves copying because you couldn't have outputs like this without copying on the input side.

So, let's say there is copying, but some of that copying may be authorized. Here are some examples. I guess I should have changed *Twitter* to *X*, but these are examples of terms of service of user platforms in which the user perhaps, unknowingly, is authorizing the platform to make the content available for all kinds of uses, including AI development.

Are there other violations in addition to violation of the reproduction right under copyright by the loading of the works into the training data?

Authorization: Platform terms of service

Many UGC platforms state grants of license from users in terms sufficiently broad to cover AI data training by the platform or its licensees. E.g., Twitter: "use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such [user] Content in any and all media or distribution methods now known or later developed"

Some licenses specifically authorize AI uses. E.g., Google: general terms of use of large platforms such as Google: *"license […] includes using automated systems and algorithms to analyze your content […] to recognize patterns in data"*

Image generation sites may require users to allow the incorporation of user-requested outputs into the training data

One question is whether the AI program which is scraping the internet, is bypassing **paywalls or other technological protection measures**. That's a fact issue to be resolved.

And then, the question whether the programs which seem, by and large automatically to strip identifying information out of the source works, whether that violates the protection for copyright management information, protection which is mandated by the WIPO Copyright Treaties (WCT)[1] and is implemented in the EU, the U.S. and other signatory countries.

We have a decision, *Doe v. GitHub*[2], in which the question concerned copyright manage-

[1] https://www.wipo.int/treaties/en/ip/wct/

[2] https://www.wipo.int/wipolex/en/judgments/details/2307

Other Copyright Violations?

Protection of Technological Protection Measures (WCT art. 11):

By-passing paywalls or otherwise avoiding access controls? TOS explicitly prohibiting use for AI training data. Relationship to TDM exceptions?

Protection of Copyright Management Information (WCT art. 12):

If inputs remove source-identifying metadata? US: *Doe v. Github* (N.D. Cal. 2023)

ment information only, because the content itself was free software, so there was no violation in copying the software. But the terms and conditions of the free software required maintaining the attribution of the copied software to its author. That information was stripped out. The defendant argued that it wasn't "actively" stripping out, it was simply programmed to ignore the identifying information. The Court was not impressed with this "semantic distinction:" designing a program to ignore identifying information can be as much a violation of the protections of copyright management information as actively removing it.

Does v. Github ("free" software; TOS permitted copying but required attribution)

Github writes new code drawing from preexisting code copied into training data. Author-identifying metadata allegedly left out of training data copies.

"Defendants argue that the complaint merely alleges 'the **passive non-inclusion** of CMI' by neutral technology which excerpts code without the accompanying CMI, **rather than the active removal** of CMI from licensed code. **This semantic distinction is not meaningful**. Plaintiffs allege that the relevant CMI was affixed to their licensed code and that Defendants were aware that such CMI appeared repeatedly across the data used to train Codex and Copilot. . . . **Defendants subsequently trained these programs to ignore or remove CMI and therefore stop reproducing it**. . . . Defendants knew that these programs reproduced training data as output. Plaintiffs thus plead sufficient facts to support a reasonable inference that Defendants **intentionally designed the programs to remove CMI** from any licensed code they reproduce as output."

B: Excepciones específicas: Minería de textos y datos (TDM)
(Comparación elaborada por Prof. Tatsuhiro Ueno, Waseda University)

Tipo de TDM	UK	Directiva UE	Suiza	Singapur	Japón
Para investigación científica sin fines comerciales	OK	OK	OK	OK	OK
Para investigación con fines comerciales		OK (con posible opt-out)	OK?	OK	OK
Otras explotaciones, además de reproducción (e.g. Distribución, comunicación pública)				OK (para verificar o realizar investigaciones en colaboración)	OK
Obras/prestaciones no adquiridas licitamente (sin requerir acceso lícito)					OK
	UK	Directiva UE	Suiza	Singapur	Japón
Prohibición de anulación contractual	Sí	Sí (para la investigación científica)		Sí	
Prohibición de anulación tecnológica		Sí			

Turning to **specific exceptions**. There are **text and data mining exceptions** in a number of jurisdictions, as you can see from this slide, which was prepared by Professor Ueno, who is actually one of the authors of the **Japanese exception**.

You can see that they are quite different in their scope. The Japanese exception is indeed the broadest exception and doesn't even require that the source works have been lawfully obtained. That, I would say, is an outlier. In most cases, it is necessary that the source works be lawfully obtained. And that, in fact, is one of the issues in one of the many pending **U.S.** cases, a case involving the copying of books, nonfiction books, into training data. The claim is that the source is a dataset called *Biblio,* which turns out to have a lot of pirated books in the dataset. So, going to that source for content to feed your AI system may be problematic if, indeed, the source includes a lot of unlawful copies of the works.

There's also a question of the scope of the exception in terms of what you can do with the text and data mining exception and the circumstances in which it is possible to opt-out. DSM Directive Article 4 is the most relevant here, and it poses a number of questions as to whether it even applies to AI. It was drafted before anybody was thinking about this. It does not include *permission to communicate to the public* the results of the data analysis. So, it may be a right to internally study, but it's not clear that there is a right then to create outputs as a result of that study.

EU: DSM Directive, art. 4

Exception or limitation for text and data mining

1. Member States shall provide for an exception **or limitation** to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 15(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining.

2. Reproductions and extractions made pursuant to paragraph 1 may be retained for as long as is necessary for the purposes of text and data mining.

3. The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.

4. This Article shall not affect the application of Article 3 [scientific research] of this Directive.

I also credit this observation to Professor Raquel Xalabarder, who is attending this Congress, who pointed this out, that maybe Article 4 is not relevant in the first place. To the extent that it is relevant (and, apparently, the EU Commission thinks it is), there is an opt-out, but there are also lots of questions about how the opt-out is to be implemented. I think that is being worked out as a practical matter.

Art. 4 uncertainties

Does not extend to communication to the public

Does "lawfully accessible" mean "accessed in accordance with TOS"?

Opt-out: What is "an appropriate manner"? Recital 18: "In the case of content that has been made publicly available online, it should only be considered appropriate to reserve those rights by the use of machine-readable means, including metadata and terms and conditions of a website or a service." How effectuate? Not harmonized. Will effective opt -outs facilitate TDM markets?

Other potential exceptions: the Berne Convention[3] has a so-called **"quotation exception",** but there are questions there about whether or not inputting an entire work can even be considered a quotation. There is also the problem that the quotation right requires attribution. And as we've seen, these systems tend not to retain attribution information. So it may be that the conditions of the *quotation exception* are not fulfilled.

Berne Convention: quotation exception

Berne art. 10: (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Is the input a "quotation"? Is the output a "quotation"?

There's also the question of the applicability of the **general "three-step test" exception to the reproduction right** in the Berne Convention, exception to all rights in the TRIPS Agreement[4] and in the WIPO Copyright Treaties[5]. A number of questions about its applicability arise, notably, would this copying conflict with a normal exploitation, if normal exploitations now include licensing works for the purpose of training data? And then there's the question of **prejudice to the legitimate interests of the author**, for example as a result of outputs "in the style of", which is not copyright infringement, at least not on the output side. But if you copy into the system a whole lot of works for the purpose of creating outputs that compete with the author's future livelihood, how should that be examined under the third of the three-step tests? I'm just raising these questions at this point.

[3] https://www.wipo.int/treaties/en/ip/berne/index.html

[4] https://www.wipo.int/wipolex/en/treaties/details/231

[5] https://www.wipo.int/treaties/en/ip/wct/

Berne Convention; WCT: 3-step test

It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and **does not unreasonably prejudice the legitimate interests of the author**.

Distinguish prejudice to the market for the *copied work* from prejudice to the *author*? The latter may encompass potential substitution for author's present and future work in general.

This brings us to the **general exception of fair use in the U.S.,** although I understand that here in Spain, at least in the Commercial Court of Barcelona[6], if not in the Supreme Court, you now have *fair use* in Spain.

This is the text of the *fair use* exception in the U.S. Copyright Act[7]; it includes a lot of illustrative examples, but this is not a closed list. These are simply a general indication of the sorts of things that may be *fair use*, but they're not *fair use* unless the factors have been evaluated.

General Exception: Fair Use

"the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright . . ."

[6] Judgement of February 11, 2024: https://www.poderjudicial.es/search/AN/openDocument/44a19cd396e94c-5da0a8778d75e36f0d/20240131, commented by Instituto Autor: España: Un tribunal se pronuncia sobre la transformación de varias obras de arte en NFT - Instituto Autor

[7] https://www.copyright.gov/title17/

Fair Use factors

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

These are the statutory factors, and the big question in the U.S., as Ryan Abbott indicated, is the application of the *Google Books*[8] case to AI inputs. I think it would help to give some facts. As Ryan indicated, the *Google Books* case is indeed somewhat fact dependent.

The *Google Books* case was in the Courts for 10 years. *Google*, back before 2005, initiated a program of scanning millions of books, approximately 7 million of which were still under copyright, found in university libraries in the United States; scanning, digitizing, creating a permanent database, and then delivering outputs. The outputs depended on whether *Google* had authorization, because *Google* settled the case against the publishers. The publishers authorized about 20 percent of the pages of the books to be delivered by *Google Books* to the user. The authors did not settle, and this case went forward with the authors as to unauthorized outputs. *Google* limited the output to so-called "snippets", which were about three lines of text highlighting the search term in order to enable the user to ascertain whether or not the book was relevant to the user's query. *Google* carefully engineered the program so that it would not be possible through repeated queries to reconstruct full pages of text by accumulating snippets. *Google* put in a lot of guardrails to make sure that the outputs would be limited to either the non-copyrightable bibliographical information or the minimum amount of expression necessary to advise the user whether or not the book was relevant.

On that basis, the Court, which said that this case was at the outer edge of *fair use*, found that it was *fair use* because of the strictly guarded limitations on how much output.

And as for the input, the authors argued: "Ok, a snippet is a very minimal output, but what about all that input?" And the Court said that the input was necessary to the generation of the non-infringing output. This holding is the source of the argument that the inputs, even if they consist of entire copies of works, should be considered *fair use*, if the outputs are non-infringing.

[8] https://www.govinfo.gov/content/pkg/USCOURTS-ca2-13-04829/pdf/USCOURTS-ca2-13-04829-0.pdf

Authors Guild v. Google, Inc. (2d. Cir. 2015)

Within its Google Books project Google scans millions of books, allows users to search the text of those books and shows a maximum of three snippets where the search term occurs.

The purpose and character of the use. Google's use is so-called transformative use: its purpose is to make available information about books and allows the searcher to identify books of interest.

The nature of the copyrighted work. This is of little influence on the outcome: whether factual or fiction, the transformative use provides information about the original, rather than providing a substitute

The amount and substantiality of the portion used in relation to the copyrighted work as a whole. Copying the entire books is necessary to enable searches in those books and while the books can be searched, the copy itself is not revealed to the public.

The effect of the use upon the potential market for or value of the copyrighted work. Take into account harm from substitutability: the limited access provided by the snippets does not give access to effectively competing substitutes, nor threaten the right holders with any significant harm.

Let's consider that proposition. We have seen that the **output** is not always non-infringing. The so-called "regurgitations" that have been shown in *The New York Times* case and maybe in the Getty Images case, suggest that the guardrails are not performing the same function that they did in *Google Books*. Moreover, in *Google Books*, the Court found that the outputs were still about the copied work.

Fair use traditionally involves criticism, commentary. You are copying from a previous work in order, as the Supreme

Is inputting works to compile an AI system's "training data" Fair Use in the US?

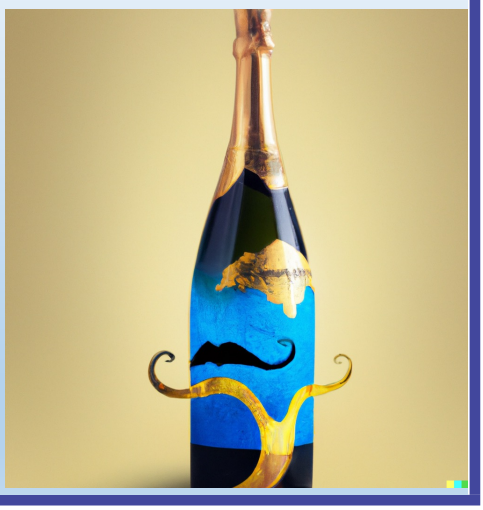
Does the reasoning of *Google Books* (2d Cir. 2015) apply? i.e., the fair use status of the input depends on whether the output is fair use (or non infringing). Example: creating works in the "style of" the author of the inputted works?

Does *Andy Warhol Foundation v. Goldsmith* (US May 18, 2023) bear on the analysis?

Court said in the *Andy Warhol* case[9], to shed new light on the work you copied. But that's not what's going on in these AI cases. The outputs are not commenting on the copied work. Indeed, one of the arguments is that the copied work is so obscured that the output is a new and different work. If that's true, there may be some tension with the proposition that this input copying should be excused because the output copying is non-infringing. And it's non-infringing because it's about the input copying. But it's not about the input copying.

Let's consider some other examples:

A bottle of cava in the style of Salvador Dalì

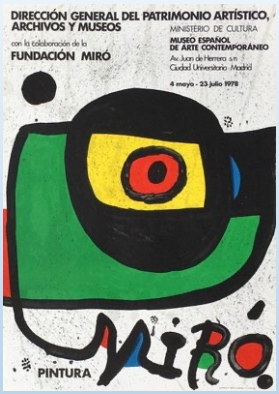


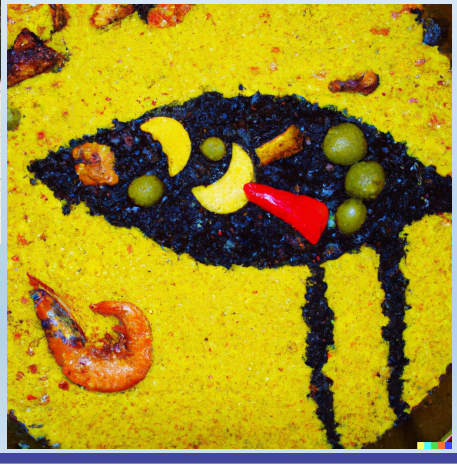
What you have here is a real Salvador Dalí image. I have asked the *Dall-E* program to create some new works "in the style of". So, we have a real Dalí and then we have a bottle of cava "in the style of" Salvador Dali.

We have a real image by Miró and then we have a paella "in the style of". These are generated by *Dall-E.* Are these outputs infringing? Well, if copying style is not infringing, then these outputs do not infringe. If you subscribe to the equation that inputs are excused if the outputs are non-infringing, then it would follow that I could feed a whole lot of Miró images into the program in order to create images that are "in the style of", but don't actually copy from any existent work by Miro. My *fair use* argument would be that the machine has learned through the inputs to create non-infringing outputs. Although I do not think that you could say that these comment on Miró, you could argue that they're a parody.

[9] https://www.supremecourt.gov/opinions/22pdf/21-869_87ad.pdf
"[T]he *fair use* of a copyrighted work, … for purposes such as criticism, comment, news reporting, teaching…, scholarship, or research, is not an infringement of copyright".
The central question it asks is whether the use "merely supersedes the objects of the original creation… (supplanting the original), or instead adds something new, with a further purpose or different character". Campbell v. Acuff-Rose Music, Inc., 510 U. S. 569, 579

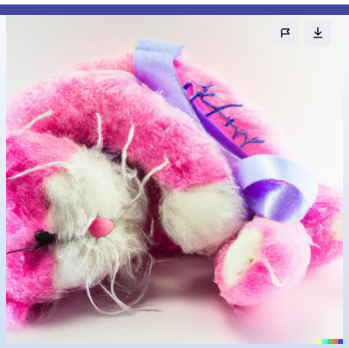
Paella in the style of Joan Mirò

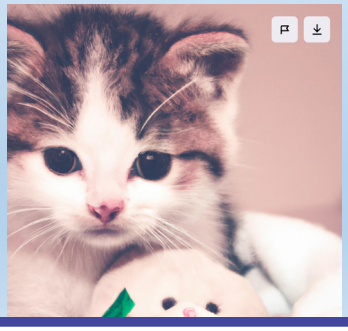


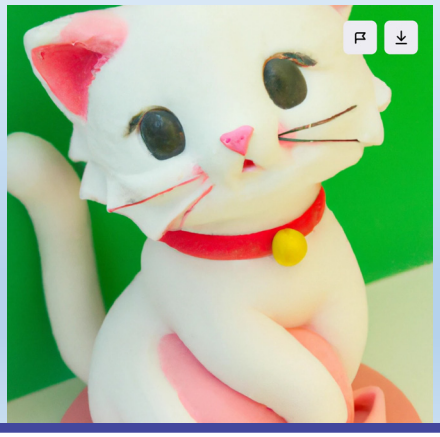


The mere fact that the outputs are arguably non-infringing does not necessarily mean that the inputs travel with the non-infringing nature of the outputs. The argument would be that one couldn't make these outputs without all the previous inputs, and the inputs themselves are not excused by the outputs when the outputs are not shedding light on the inputs.

Here's another example:





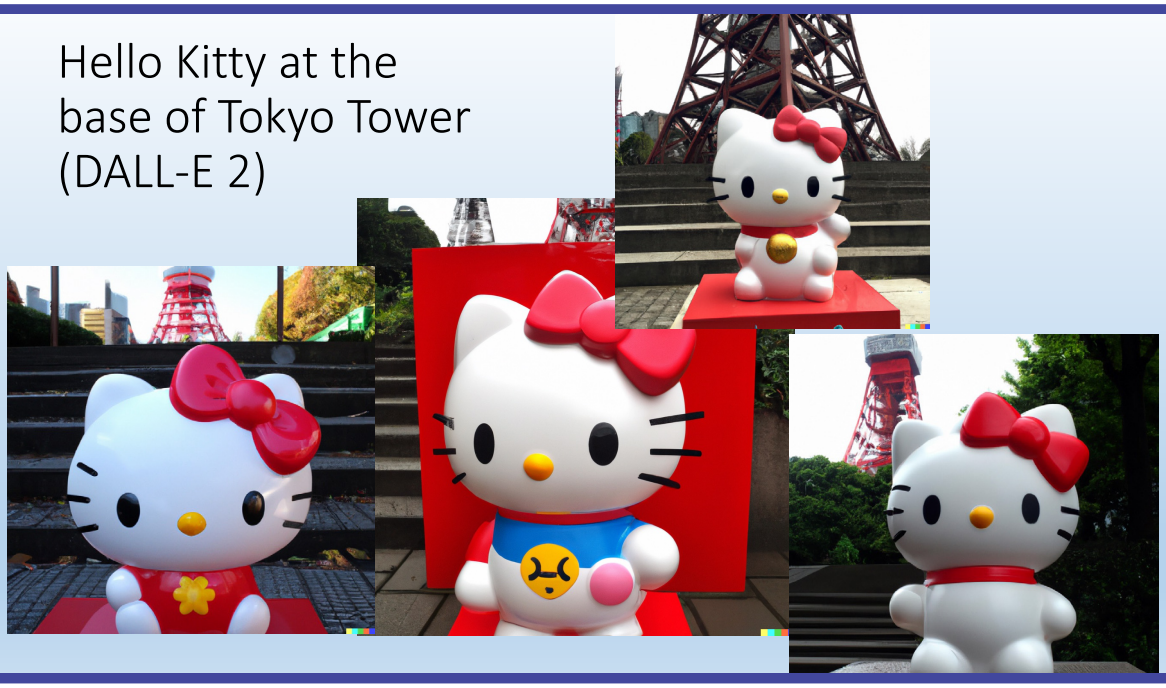


You are familiar with Hello Kitty, I assume. Now when I just put into *DALL-E* the prompt, "Hello Kitty", it mostly gave me kittens. And that's obviously not infringing, although the middle

image is somewhat more borderline. This suggests that *Dall-E* has learned not to give me Hello Kitty, but the guardrails are not very good, because I then asked *DALL-E* to "give me an image of Hello Kitty at the base of Tokyo Tower" and then I got a whole lot of very, very close copies of the Hello Kitty character.

This does suggest that not only do we have copying on the input, but that the outputs are not always non-infringing. And, again, I think it would be difficult to argue that these outputs are making some kind of comment on Hello Kitty.

Hello Kitty at the base of Tokyo Tower (DALL-E 2)



So, here are some thoughts before we get to our bonus slides:

Inputs: tentative conclusions

Copying "in the style of" is not infringing offline; does the analysis change if an AI system emulates style?

Some outputs reproduce or reconstruct the source works too substantially to qualify as fair use (both inputs and outputs may be infringing)

Fair use is an ex post case-by-case determination: too uncertain for business planning?

Development of licensing markets for inputs may further diminish likelihood of fair use

First of all, as a general rule, certainly offline, as Ryan Abbott indicated, copying "in the style of" is not infringement. Does it change when the copying occurs via an AI system because, unlike a human being creating in the style of Miró or Dalí, the human being does not make and disseminate lots and lots and lots of copies before generating an independent "in the style of"? In the AI context, the system will have made lots and lots and lots of copies in order to learn what the style is and then produce this output. The output itself arguably competes not only with extant works by the copied artists and photographers, -photographers are particularly concerned about this-, but also with the potential future prospects, if the artist is concerned. Why hire me and pay me when you can generate something that looks like me and not pay me?

If you consider particularly the third step in the three-step test, "does not unreasonably prejudice the legitimate interests of the author", one could raise the question whether input copying to generate non-infringing copies should be, whether the inputs, which are *prima facie* infringing, should not be excused because of the economic effects on artists. That's a question. As we have seen, some of these outputs would clearly be considered infringing.

Fair use is a case-by-case determination, which means that it is hard to create a business plan based on *fair use*, although *Google* did it with *Google Books*, but *Google Books* was, I think, much more closely guarded than these AI systems are. But basing your business plan on *fair use* is somewhat risky, particularly when another element mentioned earlier, on those inputs, in the *Google Books* case, there wasn't a market at the time for scanning books. Now there is a very substantial market for licensing works for training data. And therefore, just inputting works without paying for them does seem to be in some conflict with the licensing market.

Some people would say that what *The New York Times* case is really about is negotiation. There were negotiations with OpenAI. They broke down. *The New York Times* initiated the lawsuit, perhaps the lawsuit would bring people back to the table.

The burgeoning market for lawful data may create a problem in the *fair use* analysis of copying without authorization. One might say: "well, why is there a burgeoning market for lawful data?" And some of it is that the sources that are acquired by scraping the Internet or by using dodgy data sets like *Biblio* are themselves problematic, especially in systems which require lawful source for any exception to apply.

Another problem is that dodgy data gives you dodgy outputs. This is the problem of "hallucinations". Ryan Abbott mentioned that if you ask *ChatGPT* for his criminal record, it may invent one for you. *ChatGPT* does not like to say no. There are some notorious cases in which *ChatGPT* has made up Court decisions which reckless lawyers have cited, and that has not been good for their careers. There's the adage "garbage in, garbage out", which applies very much in this context.

So, there is an incentive to want to have a reliable dataset, hence the licensing. And the more licensing there is, the less the unlicensed appropriation of works in bulk looks like *fair use*. At least one could make that argument.

And I'd like to close with a somewhat different set of issues.

Ryan Abbott referred to the Jennifer Lopez authorized deep fake, and since the SGAE concerns mainly musical works, I thought I would give you some examples in the music context.

What I have done here with the assistance of my research assistant, is first to take two works by well-known Spanish performers, Julio Iglesias and Quevedo. The first thing that we're going to do is see the real works. This one, which I think is rather well-known: "Me olvidé de vivir", by Julio Iglesias.

Next, the rapper Quevedo: "La última", by Quevedo.

The next thing you're going to hear is Quevedo or his AI approximation singing "Me olvidé de vivir", of Julio Iglesias.

----Video----

That's not a bad approximation of Quevedo singing a very famous Julio Iglesias song.

And the next and last example is even more elaborated because we created a song, although I'm not sure that in terms of copyright registration, I can say that we created the song, but we asked *ChatGPT* to write lyrics about the uniqueness of a singer's voice. You can see it's a little bit ironic here. We titled it "Mi voz es única", and these are the lyrics that *ChatGPT* created. We had the lyrics created "in the style of" a Julio Iglesias song and also "in the style of" a Quevedo song.

Mi voz es única: letra por ChatGPT; composición por SunoAI; cantada por "Julio Iglesias" y "Quevedo" utilizando Voicify.AI

"Julio Iglesias"

No importa si el mundo trata de imitar,
Mi voz es mi esencia, mi forma de expresar,
Cada nota que sale de mi garganta,
Es una parte de mí, una historia franca.

Canta el viento entre los árboles altos,
Pero mi voz es única, entre mil asaltos,
Un eco que resuena en la eternidad,
Es mi legado, mi realidad.

Tengo una voz que nadie puede copiar,
Es mi regalo del cielo, mi don sin par,
Canta con fuerza, con alma y pasión,
Porque mi voz es mi bendición.

"Quevedo"

En la vasta selva del mundo, yo soy el rugido,
Con mi voz única, un tesoro escondido,
Ni la pluma más ágil, ni el verso más astuto,
Pueden igualar mi don, soy el rey absoluto.

Quevedo en la pluma, con versos afilados,
Mi voz es mi espada, en los campos batallados,
Un eco en la eternidad, un susurro en la brisa,
Mi voz es mi legado, mi historia precisa.

We then asked another program, *Vocify.AI,* to create music, and the prompt were "Latin style". They were not very elaborate inputs.

And then we also went back to the program that imitates voices. And what we have here is AI Julio Iglesias, so "Julio Iglesias" in quotes, not the real Julio Iglesias, singing this song, this AI-generated song. And then, we switch over to Quevedo singing, or Quevedo AI imitation, "Quevedo", singing the Quevedo imitation lyrics to this AI-generated song.

----Video----

So, pretty convincing. With Andy Ramos we can now discuss the legal implications of what you just saw and heard.

European and North American approaches to a global challenge

Jane C. Ginsburg

Professor of Literary and Artistic Property Law

Andy Ramos

Lawyer and Partner at Pérez-Llorca

Andy Ramos: First of all, I would like to thank Instituto Autor for this Congress, that was my home, the Instituto Autor, more than 20 years ago. And I would also like to remember **Antonio Delgado,** who was the first president and who was the master of everything and the origin of all this.

(APPLAUSE)

In this debate or conversation we want to discuss different approaches ang probably going into more details, also explain what other scholars are saying to try to hold, because there's a huge debate, not only in the courts, but also in papers and journals, and how this global challenge that we are facing, how it's also from a philosophical and humanistic point of view is perceived in both sides of the ocean or also in Japan.

So, obviously, we have this amazing, very exciting technology that is empty, it's an empty shell without data and needs a vast amount of data to be trained to understand the patterns, to understand the trends and the correlations of different words, pixels, images, and the solution that we are now discussing in different legal traditions. Here in **Europe,** just to set the context, here we have the text and data mining doctrine or exceptions in Article 3 and 4. Article 3, it's mandatory for the beneficiaries, are research institutions, and cannot be waived or cannot be reserved.

Article 4 can be applied by anybody, even for commercial purposes, and can be reserved. I would like to contrast this limitation here and in the States. But first, "first things, first", let's talk about the actual exploitation. And I would like to know your view, because in the States, some scholars **in the States and also in Canada,** Professor Drassinower, from University of Toronto, they think that in order to copy the concept of reproduction in the U.S. Copyright Act, you don't have a definition for reproduction. We don't have either in the directives. We do have in **Spain,** but you don't have in the U.S. Copyright Act. You have a definition for fixation, but not for reproduction. And the concept of copying and reproduction is quite complex. Some say that it's not enough to simply copy the physical form, but it's also, but must be an authorized exploitation of the original expression, which is what is protected under copyright law, the expression.

And these scholars say that merely the technical or non-communicative uses are not exploitation of a work for its expressive purpose. So, they conceive words like raw data that they just analyzed the trends, the correlations, the number of times that Quevedo used a word or another word, but in a very functional, technical, non-communicative, which is somehow connected with "enjoyment" of the **Japanese exception**[1].

And they criticized that Courts have overlooked this important theme for them. How do you think about this argument? Because I think because it has not yet been invoked in court. Well, in the Sarah Silverman case[2], the motion for dismissal was based on the outcome of the AI model did not include the work, so there was no copying technically. But how persuasive do you think that argument is?

Jane C. Ginsburg: The "not enjoying as a work" defense doesn't yet exist in the positive law. Whether there has been a copy is the threshold issue regarding which, at least in *Google Books* case, the defendant did not dispute that there was copying into that database. The question was whether that copying could be excused because the purpose of the copying was to generate non-infringing outputs. The Court did not address the question, which wasn't posed in that case, if the purpose of the copying was not to generate any outputs at all, if were for only *Google*'s internal purposes. Would it be *fair use* if there were no outputs? Would the copying not count in the first place? Those questions were not posed.

As a matter of current positive law, if the copy exists for a period of more than transitory duration, then it's a copy. And so, *prima facie*, at the first level, the reproduction right is triggered. But that copying might be excused as a *fair use* or under some other specific exceptions.

Andy Ramos: Because they think that we don't even have to contemplate *fair use* when there is not a copy.

Jane C. Ginsburg: Exactly.

Andy Ramos: And the defense or the exception, depending on what's your thought

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[1] Article 47-7 of Japanese Copyright Act (Act No. 48 of 1970, amended up to July 19, 2024): For the purpose of information analysis [...] by using a computer, it shall be permissible to make recording on a memory, or to make adaptation (including a recording of a derivative work created by such adaptation), of a work, to the extent deemed necessary. However, an exception is made of database works which are made for the use by a person who makes an information analysis.

Information analysis' means to extract information, concerned with languages, sounds, images or other elements constituting such information, from many works or other such information, and to make a comparison, a classification or other statistical analysis of such information; the same shall apply hereinafter in this Article.

Editor's note.: Article 30.4 expands the scope of works for text and data mining uses, while introducing the types of exploitation that can be carried out. It permits the exploitation of any copyrighted work that is not intended to enjoy or cause another person to enjoy the ideas or emotions expressed in such work. The definition of 'enjoying' emerges as a key element in determining the scope of this limitation.

For the Japan Copyright Office, the economic value of a work arises when a "person who sees or hears the work, pays compensation for said work to enjoy the ideas or emotions expressed in the work, satisfying the intellectual or emotional interests of said user". Therefore, acts performed without the purpose of enjoying the ideas or emotions expressed in a work are not considered to harm the interests of the copyright holder.

[2] gov.uscourts.cand.414822.104.0_1.pdf

on this, but we don't – it's a previous analysis that there is not a copy. I disagree. I disagree because when I see that actually when the provider of a general-purpose AI model is mining text and other things, it is not to understand and to get knowledge and to discover the knowledge of the expression and what's unique of that author.

So, I think that it's probably not in a traditional way, that they are not copying the expression verbatim, but somehow, it's trying to understand this expression and not only the idea that's underneath that work.

Jane C. Ginsburg: Well, that may well be true, and that's another rebuttal, that the copying is only informational, it's not expressive. But the very fact that these systems can give outputs "in the style of", does suggest that the point of at least some of this copying is for expression. You don't learn how to emulate somebody's expressions if you are not imputing that expression. So, it may be that the very premise that all these programs are doing is disaggregating the inputs into word-order is problematic. And then in our previous discussion, I raised the question whether, if that were true, at least in the EU, if the argument is that every book is in effect a database, it's a collection of words, well then wouldn't the copying of the book / database violate the EU database, right?

Andy Ramos: When I was preparing this conversation, I checked the literature, the academic literature on both sides of our systems, and I was very surprised that there are many scholars that are trying to advocate in favor of mining. It's either, it should be, the exceptions here in Europe should be broader, they are too narrow. And in the States, they say that it should be covered by very few things, that the *Fair Use Defense* should not be considered, but most of them things that *fair use* should be considered. But all of them repeat this mantra of the right to read should be the right to mine.

When we human beings, when we are reading a book or we are enjoying a work of authorship, we are not reproducing, we are not infringing copyright, so machines should be treated the same way. What do you think about that? I know what you're going to say, but I want you to say that.

Jane C. Ginsburg: Well, beware of analogies. It's true that particularly in copyright litigation, it has been said that the side with the best analogy wins. And if you can persuade people that an AI system is just like a human being and reading a book does not infringe, then when an AI system reads a book, that should be treated the same way. But of course, for an AI to "read" requires making copies, and it is also making copies on a vast scale.

Then the scale actually cuts two ways, and Ryan also adverted to this. If you copy a few works and the copying does not meet the third *fair use* criteria, well then, you're an infringer and you can be enjoined or you can be ordered to pay damages. But in the AI context, the argument has been, "we copy so many works, we copy millions and billions of works and we can't possibly pay for all those millions and billions of books, and therefore it must be free".

That is a slightly perverse argument, but there was the undertone in the *Google Books* case as well. I think often with large-scale copying the answer is **collective licensing.** And that may resolve the so-called market failure problem that you can't possibly license everybody. Another variation on this theme is even if you could license in bulk, each individual author would receive so little that

it is not worth impeding the progress of technology to make the AI developers pay.

Have I been unfair in that characterization? You will hear those arguments a fair amount, which is why I think the **development of licensing markets** becomes really, really crucial.

I would also say, and I think Ryan adverted to this as well, it's not just money, it's also attribution, as we've seen, attribution disappears. And for a lot of artists, the interests are both economic and dignitary. At least one of the image generation programs, *Midjourney* or *Dall-E*, now allows artists to opt **out of style outputs.**

But that's at the moment out of the goodness of the hearts of that particular image generation program. Nonetheless, I think the concern is real. I think a lot of artists are excited by these outputs and they can do new creative things, but there is also the problem of the creation of a lot of fairly demeaning stuff that artists are not always happy about, that they may have more recourse in the EU than they do in the United States.

Andy Ramos: Yes, but I think that in the cases that you showed during your presentation, it's very obvious, because somehow, they were obscene. They were very, you know, you could see the input and the output. And I've seen that they didn't do a good job in training the model to try to generate something new. And that's not only, there is an infringement, because the essence of the source work was in the outcome.

But what if, and this is also something that we discussed during the preparation, I remember when I first used *ChatGPT* with my daughters, we were asking for songs, they gave us the lyrics, and we asked "*Let It Go*, the *Frozen* song, change it and do it in this way", or "add more paragraphs", or do something. And now we play doing that. We tried the other day, and it didn't work. I think that they are, that's my personal opinion, implementing something amazing internally. They are researchers, they want to see where the limit was. And they, without having an internal protocol to whether *fair use* apply or the DSM directive exceptions for data mining here in Europe applies. And now they are undoing the path, and they are trying to set in these guards that you explained before.

Maybe if we have AI model like a *ChatGPT* or any other, which is in some ways similar than the *Google Books* case, that the whole service, it's set up to not to infringe copyrights or to apply *fair use* defenses or here in Europe to be able to apply any of the defenses. Don't you think it's going to be harder licensing? Because you are applying for one defense or an exception, you don't need a license. So, it's quite contradictory that you are doing both. Or even attribution, if you just, in your model, you just take the trends, the correlations, and the output. You don't see anything from the input. So, there is no, how can you attribute to, will you attribute all the authors, all the writers that you...

Jane C. Ginsburg: Isn't that a question under the AI Act's[3] transparency requirements? Transparency requirements which will apply to US businesses doing business in the EU. So, the so-called *Brussels effect* will, I think, have an impact on the design of programs in the United States as well.

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689

In your lyrics example, the guardrails may be a response to a lawsuit. The AI program *Anthropic* was sued by the authors of lyrics for doing exactly this. I think the difference here is when *Google* structured *Google Books*, they built all the guardrails in from the start, and that was very important to their success in the litigation. What seems to be happening now is completely *ad hoc*. So, the developers take a completely maximalist point of view, then they get sued, and in response to one lawsuit or another, they might put in some guardrails. But as far as I can tell, there is not a coordinated or consistent policy about what kind of guardrails to put in.

And of course, we're talking about copyright, but there are other issues as well. There's trademark law, as Ryan pointed out, with the *Getty Images* logo showing up. There are false endorsements. Would people think that Julio Iglesias or Quevedo endorsed any of what you just saw? There are questions of whether there are personality rights in one's voice that may have been violated by what you just heard and saw.

The voice issue may also be a copyright issue, at least in the U.S., I'm not sure about neighboring rights in the EU, but the U.S. Copyright Act[4] protects the actual sounds of a recorded performance. So, if these programs are creating new Quevedo or Julio Iglesias performances by manipulating the actually recorded sounds, there may be a copyright violation.

However, the person who may have standing to complain about that is not necessarily the performer. It is the owner of the copyright and the sound recording who may well be the record producer and not necessarily the performer.

Andy Ramos: I think here in Europe this kind of cases, we mention this before, should be, at least as a litigator, I wouldn't apply copyright. I would apply for publicity rights or their own image rights. And here in Spain, we have a very good example, like in the States with the Tom Waits case[5]. Tom Waits also sued here in Spain against a car manufacturer and the outcome was quite similar than in the United States and also considering that he never licensed his own image.

So, there are some precedents already and some resources. You mentioned before about the two-second rule for…

Jane C. Ginsburg: It's not a rule.

Andy Ramos: The are some precedents for transitory recordings. I think that the definition of fixation in the States is different than here, in Europe. For you, the reproduction should be sufficiently permanent or stable to permit it to be perceived, reproduced, or communicated. So, it must be able to be communicated, or it's something transitory to be…

Jane C. Ginsburg: For a period of more than transitory duration, but further communication for a period of more than transitory duration is entirely possible as it keeps going and going and going. I think there's a lot of uncertainty about how this definition, which is from 1976, applies to digital communications. And we have the meaning of transitory dura-

[4] Copyright Law of the United States | U.S. Copyright Office

[5] https://interiuris.com/blog/wp-content/uploads/WLES_07-15-2008_03_21.pdf

tion in one circuit; in the second circuit, seems to be that 1.2 seconds is too transitory, but in the ninth circuit, several minutes is not too transitory. And we don't know in between those what counts as too transitory, and I don't know how much time it takes for an AI system that is scraping the internet and entering the digitized works, how long they stay. That those digitized works may be reformatted does not, I believe, change the question of whether or not there has been a reproduction.

Sometimes you hear arguments that the work has somehow been compiled down or changed in some way before it goes in or as it goes in, but I think that that's a distraction. Every work that is digital is in ones and zeros, right? It's already reduced in some form. So further reducing it, if in fact, at least if it's replicable, I think still makes it a copy. And as we've seen, it appears to be replicable if you put in the right prompts and if the system has not put in the right guardrails.

Andy Ramos: So, I think that we must understand the whole process and we must deconstruct how these training processes work to understand when there is a fixation, reproduction, scraping, et cetera. So in general terms, and I don't know either the details and probably change depending on the technology that you have, but in general terms when a company or a research institution is training an AI model first they have to access data, then they have to extract, reproduce or normalize, they have to somehow prepare the data to the third stage of the of this process that is to teach or to make the computer learn.

So, in the access to data, this is something, one of the differences between the Japanese, let's say, exception, the **Japanese model** that they, we can discuss later if you want, but the Japanese model, young researchers or providers of AI models, they don't need to have lawful access to data. So, illegal access to data or any kind of access to data would be fine in order to train models. That's why they wanted to be Japan; they wanted to be the paradise of AI. I don't know if they are achieving that after five years. But here in **Europe**, we said in both cases, Article 3 and Article 4, that you must have a lawful basis or a lawful access to that data, which has been very criticized by some scholars because they think that it's very easy for copyright holders, or not copyright holders, in general, data owners to restrict the access of data, which is very valuable for their research activities.

How is it working in **the States**? Do you think that when finally, the Supreme Court will rule or will decide on this matter that access to data, and you mentioned before that there was a recent *The Washington Post* article saying that most of or some of these models have been trained with pirate content and disregarding licenses, disregarding TPMs and disregarding other kind of contractual arrangements. What role do you think legal access plays in the States?

Jane C. Ginsburg: There´s no explicit limitation in this *fair use* provision, but there is a case that goes back to 1985, in which the Supreme Court stated that one of the considerations for ruling against *fair use* was that the defender was making its copy based on a "*purloined manuscript*". So, if the source is stolen, that doesn't look good. Again, it may not be determinative because we don't have an explicit limitation, but I think it might well be taken into consideration.

I would like to return to this analogy between if a human being can do it, then an AI system ought to be able to do it. I think that

those analogies tend to be resisted, at least in certain *fair use* contexts. For example, we have the first sale doctrine, the exhaustion doctrine here. If you own a physical copy of a book, a painting, or a CD, you can give it away, you can sell it, and except for the *droit de suite* context, the author cannot object and will not be paid for the subsequent resale or regifting of the physical object. The question has arisen whether, if you can do that, can you translate that outcome to the digital environment?

We now have two different sets of examples. One concerns an attempt to create a used market, used CD market for MP3s. The entrepreneur, who I think was not a copyright cowboy, was really trying to do a legit business, his insight was that lots of people have lots of MP3s that they're not listening to anymore. Now, a lot of those may be pirated, but he deliberately structured his program so it would be limited to CDs that had been purchased from *iTunes*. If you don't want these MP3s anymore, you can upload them to a server, which would serve as a kind of broker for used MP3s. And when you upload, the program will delete the MP3 from your computer. You don't have it anymore, just like a used CD. You send it up to the broker's website, and then when somebody wants to buy it, the website sends a copy of the MP3 down to the purchaser and erases it from the server. So that the argument was, functionally, this is just like the first sale, like exhaustion. There is only one copy at the end of this enterprise. And that was rejected.

Andy Ramos: Sorry to interrupt you. I like the analogy of the defendant that they use the *Star Trek* transporter, saying that it's like transporting bits from one computer to another. So, these kinds of cases make lawyers creative as well, even if they don't like them.

Jane C. Ginsburg: Creative but not successful, in this case.

Andy Ramos: Not successful, of course.

Jane C. Ginsburg: Because the first sale doctrine is limited to physical copies and the argument was "*this should be a fair use because it's sort of approximation of the first sale doctrine*". And the Court rejected that as well, because digital is different. The qualities of a physical copy are that it will deteriorate, that there's a certain amount of transaction costs involved in selling your used physical copies. But in the digital world, it's instantaneous, there's no friction and it's a perfect copy. Therefore, it's not the economic equivalent of the first sale doctrine and not a *fair use*.

And more recently, there was a controversy involving the so-called controlled digital lending, where the *Internet Archive* wanted to do this with books, the *fair use* defense failed both at first instance and on appeal. So, the fact that you can do it in the physical world doesn't necessarily mean that you can do it in the digital world. And in both instances, the scale of the operation weighed rather heavily in the Court's consideration of whether the *fair use* exception should extend to those scenarios.

Andy Ramos: So, I'm going back to the **European exceptions**, especially for research institutions and cultural heritage organizations, that the exception is mandatory and cannot be reserved, or even that these institutions, if they want to use data from a data set or a database which they have legal access to, and if this one has a technological protection measure, that they can oblige the owner of the database to provide access or to somehow circumvent

that TPM. And we mentioned that Article 3 does not say anything about this obligation to give access and to lift the TPM. Recital 7 of the Directive[6] does. So, I think they should be included in the article, but in any case, and we have seen those other countries like **France,** first with Hadopi (*Haute Autorité pour la diffusion des œuvres et la protection des droits sur Internet*), now with Arcom[7], they have created some entities that helps to navigate these kinds of challenges of research institutions.

In **Spain,** if somebody wants to benefit from a limitation, they must go to the court, to civil court, and I don't know any case. Unfortunately, we don't have somebody like Ryan who is trying to explore the boundaries of our legal system. But now here, in Spain we recently created a Copyright Office, which in the proposal of the law[8] that is in the Congress right now, probably will be approved in the following weeks or months, they don't mandate this Office this some agile mechanism for research institutions and scientists to be able to use data sets to mine and to use them as training. So, these voluntary measures or appropriate actions that the Directive talks about, how do you think that should be configured and how does it work in the States with the list of exceptions that's released every three years by the Copyright Office and the Library of Congress? Is it working there better than here?

Jane C. Ginsburg: The 1998 Digital Millennium Copyright Act[9] put into place the protection of technological protection measures (TPM) and, with respect to access controls, put in very strong protection with very specific exceptions which I don't think apply in the context of AI. Congress also mandated the Copyright Office every three years to name more exceptions that would apply for the next three years to permit the circumvention of access controls, when doing so would promote non-infringing use of the works. The Copyright Office has been doing this since 1998. It's not the favorite of their occupations. But over time, there have accumulated a number of exceptions which are not automatically renewed, but they are often renewed by the Copyright Office. And I don't think that there is anything that corresponds exactly to this, but in the next rulemaking one can imagine that such requests will be made, and we will see how the Copyright Office handles them.

Andy Ramos: Going back again to Article 4, the **opt-out mechanism.** Companies with commercial purposes, in **Japan,** can benefit from these exceptions. In **the States,** even if you have a commercial purpose, the first

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[6] *"The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the rights granted to authors and to other rightholders under Union law. Such protection should be maintained while ensuring that the use of technological measures does not prevent the enjoyment of the exceptions and limitations provided for in this Directive. Rightholders should have the opportunity to ensure that through voluntary measures. They should remain free to choose the appropriate means of enabling the beneficiaries of the exceptions and limitations provided for in this Directive to benefit from them. In the absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC, including where works and other subject matter are made available to the public through on-demand services".*

[7] https://www.arcom.fr/

[8] https://www.congreso.es/public_oficiales/L15/CONG/BOCG/A/BOCG-15-A-13-1.PDF

[9] https://www.copyright.gov/legislation/dmca.pdf

factor of the *fair use* doctrine, you can benefit from this. But in **Europe,** we are separating research institutions and companies. Companies can benefit from this, but with the opt-out. And now we have a different resolution from the European Court of Justice that says that, in some cases, if you have a database that is protected under either the original or the sui generis rights, you have some kind of limitations, but if you have a bunch of data that is not protected by either of those, you can establish your own **terms and conditions.**

So, and in this there, the owner of this data set is not limited or is not under the umbrella of the database Directive[10]. This is the *Ryanair case*[11]. This judgment analyzes the concept of database and the requirements for a database to be protected by copyright or to be protected by the sui generis right provided for in the Intellectual Property Law. In my mind, it gives you more prerogatives to the owner of a non-protected set of data than to the owner of the protected set of data, which can be very detrimental for this business because they can, in terms and conditions, and this is something that we have seen already, that it's being created like a *"paracopyright"* or a parallel copyright rule by terms and conditions instead of the Copyright Law. Am I crazy?

Jane C. Ginsburg: No, but there's another side to that as well. This is a controversy that the Supreme Court recently declined to rule on, but it will probably come back, which is the respective rights of the copyright owners of works that may be on various platforms and the rights of these platforms with respect to that content.

The problem is that under the platform's terms and conditions of use, it receives only a non-exclusive license. If you have a non-exclusive license, you are not a copyright owner. And if you are not a copyright owner, you do not have standing to sue for copyright infringement.

A website carried song lyrics lawfully. Its terms and conditions said that it was not permitted to copy or at least commercially exploit these song lyrics. And the defendant in that case did it anyway and was sued by the platform. The defense was: "you can't sue for copyright infringement because you're not a copyright owner". And the platform said "we're not suing for copyright infringement; we are suing for breach of contract. You have breached the terms and conditions of access to our site", to which the reply was in that the U.S. Copyright Act preempted the contract claim. If a claim under state law involves the subject matter of copyright, -song lyrics-, and is equivalent to copyright -because it's seeking a remedy against copying-, then it is preempted.

Rejoinder to that is: "contracts are different, because other legal theories concern rights which are good against the world, like other tort claims or property claims; but a contract claim is good against the parties to the contract, it's not good against the world. Courts have recognized the difference between a contract claim and a copyright claim". I do not think this is convincing because online your co-contractant is the world. So, functionally, I'm not sure that there's a difference between copyright and contract in that context.

[10] https://eur-lex.europa.eu/eli/dir/1996/9/oj/eng

[11] https://www.poderjudicial.es/search/TS/openDocument/1d6c265cdc91f945/20121210

That said, I think it is nonetheless problematic that the platform which has hosted these lyrics has no rights. If we think that the contract claim is invalid, then the platform has no rights against the third party who is copying and re-disseminating the lyrics, and it may be that the individual copyright owners, the authors of the lyrics, maybe they don't have enough of an economic interest individually to bring the claim, in which case you have a situation in which perhaps there is unauthorized copying and further exploitation, and nobody has standing or the economic interest to bring a claim. So that's problematic as well.

Andy Ramos: Actually, we have here in Europe a similar case with the same outcome.

I think that we are running out of time, but my last reflection and question before giving the voice to the audience, is that we see that the precedence has been very important in both sides of the world, in the States and here in Europe with the Court of Justice of the European Union, and actually we come from a tradition of a closed list of limitations, but then we are seeing the European Court of Justice, for example, in the *Pelham* case[12], where they have applied the **freedom of the arts**[13]. We have seen also the Spanish Supreme Court applying *fair use*[14]; the Commercial Court of Barcelona[15] without any kind of embarrassment, going one by one, which is, I mean, for a litigator is very useful because it gives us more resources, but as a scholar I have some doubts. Or we have even, and you pointed out, the *ius usus inocui*.[16]

So, we think here in Europe that we have a closed list of exceptions, but Courts are indicated otherwise, in the States you have exceptions in your Copyright Act, but you had a lot of precedents, and some of the precedents then have been positivized in establishing the Copyright Act. But I think part of your heart is also here in Europe, because you have studied here as well. Do you think that both traditions have been merging somehow, or there's no such separation of civil and continental law like before? That's the first question. And the last, how should we resolve this mess, getting together with Japan, the US, the EU and try to find a compromise solution or a solution maybe through WIPO for this global challenge?

Jane C. Ginsburg: There may be some convergence in the direction of introducing more flexibility, which is the hallmark of *fair use*. I might say "be careful what you wish for", because *fair use* is somewhat unpredictable. It's extremely fact intensive. It has been said that "*fair use* is the right to hire a lawyer", but I would say that if you're an author, "copyright is the right to hire a lawyer". So that's another one of the slightly facile sayings that I have some issues with. That said, it's the usual debate between rules and standards.

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[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CJ0476

[13] Editor's note: V. paragraph 31 of the judgment: *"However, where a user, in exercising the freedom of the arts, takes a sound sample from a phonogram in order to use it, in a modified form unrecognisable to the ear, in a new work, it must be held that such use does not constitute 'reproduction' within the meaning of Article 2(c) of Directive 2001/29".*

[14] https://www.poderjudicial.es/search/TS/openDocument/2172fa59b81d5ee7/20120618

[15] https://www.poderjudicial.es/search/AN/openDocument/44a19cd396e94c5da0a8778d75e36f0d/20240131

[16] https://www.poderjudicial.es/search/TS/openDocument/2172fa59b81d5ee7/20120618

Rules give you some certainty, and at least you know what you can, and you can't do, and you can plan accordingly. Standards are very flexible. So, you might get more justice in the individual case, but less predictability.

I suggested that *fair use* is not necessarily a way to build a business plan. If you're *Google* and you can litigate for 10 years and bury the opposition, that's one thing. But if you're a start-up, that may be a very different question.

So, yes, there may be convergence, whether or not it's desirable is questionable. Is there convergence in the other direction? Well, we still don't have moral rights, and conceivably, we might do something in the area of attribution rights; the Copyright Office has made some recommendations in that regard. I think integrity rights are more dubious because of our concerns about free speech and so, I don't see a whole lot of convergence, maybe a little bit in the US directions toward the EU. But we should also take into account the "Brussels effect," whether or not our entrepreneurs like it, it may be that in order to do business in the EU: it will be necessary to comply with EU rules which are stricter on attribution. The **transparency** issues are quite interesting. The DSM directive in Article 17 is also very interesting.

I think that there may be convergence from on high, in effect mandated by the EU. I think that that is an entirely possible speculation.

And, regarding your last question, I don't think I would be so hubristic as to suggest a solution to the actual situation. And anyway, lawyers need work.

Andy Ramos: So, it's time to ask questions.

QUESTION SESSION

Question 1

José María Anguiano: Thank you for this nice and fresh conversation. I have a question for you, Jane. I want you to predict the future if you don't mind. *The New York Times* case and the question is if you think that American Courts will continue with *fair use* doctrine after shirts and jeans. I mean talking about the four factors you've been talking to us, the fourth one. Do you think that if you change shirts and jeans for *ChatGPT*, would it work the fourth factor? Won't it affect the normal exploitation of the previous creation? Will American Courts continue with the *fair use* doctrine, and especially with the fourth factor, related to the normal exploitation of the creations included?

Jane C. Ginsburg: I think that if it is correct that what may really be happening in the Times case is a negotiating tactic. There will be a license and there already have been licenses granted by the Associated Press, by Getty Images, and the more licenses that there are, the more the licensing, the inputs will be a normal exploitation of the work. And so, I think it would make the *fair use* argument more difficult than it is when there isn't a licensing market. And that's pretty classic.

To give you an example from what is now older technology, photocopying, a famous case from the 1970s involved massive photocopying by the government by the National Institute of Health, of articles from

scientific and technical journals that were delivered on request to researchers, to doctors and other scientists. And one of the publishers of one of the journals that had been systematically copied in this way brought a lawsuit. Because it was brought against the government, it went to the Court of Claims, that found that the copying was *fair use* because of the importance of advancing medical research and the fact that at the time there was no market for licensing these journals for photocopying, the result would have been that the scientists, the research scientists who got the photocopies wouldn't get the photocopies anymore, but that there wasn't an effective way of ensuring payment for this.

Time goes by, and a collecting society called the Copyright Clearance Center, was created to license photocopy rights and they then granted photocopy rights to many large institutions, commercial as well as non-commercial, and one of those, *Texaco*, exceeded the terms of its license and so, it was sued for making, giving photocopies to its research scientists, commercial research, but still research, and the defense was *fair use*, referencing the *Williams and Wilkins* case[17]. The Second Circuit said things have changed. Back then, there wasn't an administratively non-burdensome efficient way to license photocopy rights, but today there is, thanks to the Copyright Clearance Center, and that was the key factor because none of the other considerations would have weighed in favor of *fair use*.

It was the entire copies of the work and the copies themselves were not being incorporated into new works that commented on the copies or anything like that. So, it was just a consumptive use by the research scientists. I think the way the *Texaco* case[18] is illustrative of how as markets evolve, if the basis of the *fair use* defense is so-called market failure, there's just too much copying and no administratively reasonable, economically efficient way to administer a system of payment. If that turns out to be not true anymore, the *fair use* claim that for practical reasons was once persuasive becomes a lot less persuasive.

Question 2

Thank you very much. I think that I'm coming back to Andy´s last question, because what we have nowadays is really a regulatory patchwork, right? The EU Act, the Executive Order of October 2023 on AI in the US, the Japanese, the Chinese approaches, etc. So, according to you, Jane, and I think that's what Andy asked, is WIPO the right place to try to reach an agreement on something that could be feasible and enforceable? Because we saw also the Hiroshima Declaration[19], which was a very important step on international cooperation. Because if we do have the EU Act here, but then in the rest of the world, they are doing something that is very different, there are no barriers on digital. So how will it work? We really don't know. How enforceable will it be? We know that it won't be. So, my question is how to solve it at the inter-

[17] Williams & Wilkins vs. United States: https://supreme.justia.com/cases/federal/us/420/376/

[18] https://fairuse.stanford.edu/case/american-geophysical-union-v-texaco-inc/ ; American Geophysical Union, et al.,plaintiffs-counterclaim-defendants-appellees, v. Texaco Inc., Defendant-counterclaim-plaintiff-appellant.in Re Texaco Inc., et al., Reorganized Debtors.academic Press, Inc., et al., Petitioners-appellees, v. Texaco Inc., Respondent-appellant, 37 F.3d 881 (2d Cir. 1994) :: Justia

[19] https://digital-strategy.ec.europa.eu/es/library/g7-leaders-statement-hiroshima-ai-process

national level and if WIPO could be precisely the right forum to make it feasible.

Jane C. Ginsburg: There are a lot of interpretation issues. To go back to the United States for a minute, I'm not sure that there is serious advocacy for some kind of new provision in the Copyright Act. It's very difficult to get one. And usually, any copyright legislation that concerns new technology will be obsolete before it is promulgated. So, it will answer yesterday's question and not today's or tomorrow's. And I would say that it is better to interpret existing general principles than to try to come up with something very specific. This is as a matter of national law.

Taking it to the international level, I'm not sure what would be an appropriate instrument to harmonize I guess, would it necessarily impose an interpretation that might not be possible to obtain agreement on? And the process, if we're talking about something at the level of a Treaty, I think that's even more unlikely and more subject to early obsolescence or immediate obsolescence. But I would also defer to those who are much more familiar with WIPO and its possibilities[20].

[20] Editor's note. At the time of publishing these proceedings, Ramón Areces Foundation has released a monographic issue of its Journal dedicated to "The cultures of artificial intelligence", in which Adriana Moscoso del Prado, General Manager of the European Grouping of Societies of Authors and Composers (GESAC) takes part, among a good number of other authors. In her contribution to the Journal, entitled *"The Generative AI Revolution: Implications for Copyright and Intellectual Property" (p. 57 ff.), she states: "The copyright "test" for considering a work to be eligible for protection is originality. Nothing more is required and that is good to achieve the ultimate goal of protection, which is to promote creativity in total freedom.*

Beijing Internet Court ruled in November 2023 in favor of an artist who had generated an image assisted by a generative AI tool and said image had been used by a third party without his consent. For the court, the image deserved to be protected by copyright despite having been generated with an AI tool and the intellectual property rights over it should fall on the natural person who had created it. The court understood that there was originality.

On the opposite extreme, the Washington Copyright Office decided in 2023 not to accept as protected works those created or assisted by generative AI, unless the use of AI can be considered de minimis. Therefore, it is not at all clear that the work protected in China could pass the originality test in the US. These disparities of criteria from one side of the planet to the other demand global responses that, at the moment, we are not able to give.

Just as digital technology was going to bring about a total transformation of the way we live at the end of the 20th century, AI is likely to have a similar impact. At that time, and as far as copyright and the cultural sector are concerned, prior to all the regulations I have mentioned above, there was work within the United Nations that was fundamental. The international community, through the World Intellectual Property Organization (WIPO), was able to negotiate and bring to fruition in 1996 the approval of two international treaties that were the basis for everything that has come since.

This enormous effort to reach an international consensus is a long way from being replicated today for AI. WIPO, the UN's specialized agency for intellectual and industrial property, has been politically blocked for years, due to the resistance of a few countries to not advance in a multilateral regulatory framework. The EU is an exception, but its will is not enough. This situation, which unfortunately is not only specific to WIPO, but is repeated throughout the United Nations system, is undermining our ability to work together with the international community on an issue that affects us as humanity. These are bad times for multilateralism, reality is responsible for reminding us of it day after day".

Roundtable: "The use of protected content by artificial intelligence systems"

Speakers:

Fernando Carbajo Cascón

Full professor of commercial law at the University of Salamanca

Antonio Muñoz Vico

Lawyer, intellectual property partner at Garrigues

Nuria Oliver

Expert in artificial intelligence, holder of a phd from Massachusetts Institute of Technology (MIT)

Moderated by:

Marisa Castelo

Lawyer and president of the Instituto Autor (Intellectual Property Institute)

Marisa Castelo: Good morning to all of you: thank you for joining us at this Congress.

We are going to address a substantial part of the phenomenon we are analyzing, which we could call the input, that is, how the advent of artificial intelligence affects existing intellectual property rights. We are going to deal with it from three perspectives: from an artistic point of view, from an audiovisual point of view, from text and data mining, and from the pastiche regulation.

Let us first deal with the so-called **"algorithmic censorship of art".** It seems that artificial intelligences are shameless in using all of the contents of humankind's visual arts for whatever they see fit, yet they blush when a lady's breast appears in a painting by Rubens. Nuria Oliver is going to explain to us exactly what the problem of algorithmic censorship of art is.

Nuria Oliver: Thank you very much, Marisa. It is a pleasure to be here. Just out of curiosity, could all the lawyers here raise their hands? And the artists?

My point of view is much more that of an artist and, obviously, a technologist than a lawyer and I find it a little intimidating to talk to so many lawyers in the room. I am an expert in artificial intelligence and I run a foundation called *ELLIS Alicante*[1], dedicated to research in artificial intelligence, that is ethical, responsible and for the social good. One of the areas we are researching is the social impact of artificial intelligence algorithms, especially those used on social media. We must remember that the most populated country in the world is Facebook, the second is WhatsApp and the fifth is Instagram. An estimated 4.6 billion people in the world use social media. For most of these people, if something is not on social media, it does not exist. Social media is the main source, not only for access to information about friends or celebrities, but also for access to news and, of course, cultural content. In other words, the power of these platforms is enormous.

In this context, for the artists in the room, especially those who are visual artists, having a presence on social media platforms is critical today because it is how you reach your audience, have visibility and make a living.

With 4.6 billion global users and understanding that anyone can be a content creator and can upload content to these platforms, all social media platforms have defined a set of rules to moderate the content that is published on them, to protect users and society from unacceptable content. For example, content that incites terrorism or violence, pedophilia or pornographic content. Historically, this content moderation was done by humans, but, given that, for example, every day 90 million photos are uploaded to Instagram or a billion videos are viewed on *TikTok*, it is clear that there are not enough humans on the planet for this work to be done manually because, in addition, it is extremely hard work, as has been reported in some media reports. Why? Because content moderators are human beings who have to constantly watch horrific content (of decapitated heads, of people in horrific situations, of naked children, etc.). It is one of the worst jobs out there.

Obviously, because we have AI and we have artificial intelligence algorithms that have a great capacity to automatically analyze text, video and images, all platforms now perform content moderation using algorithms that are known as **content moderation algorithms** and, only in exceptional cases, humans monitor what those algorithms are filtering and censoring. In this context, one of the types of content that is greatly affected by these algorithms is artistic content. Artificial intelligence algorithms are judging human art, they are deciding whether it is acceptable or unacceptable.

For as long as we have existed as *Homo Sapiens*, in our artistic expression, which we could argue is one of the distinguishing features of being human, artistic nudity has been key. Since the Venus of Willendorf, more than 25,000 years ago, being able to show the nude human being in an artistic way has been fundamental to our artistic expression. But unfortunately, very often artistic nude content is censored by content moderation

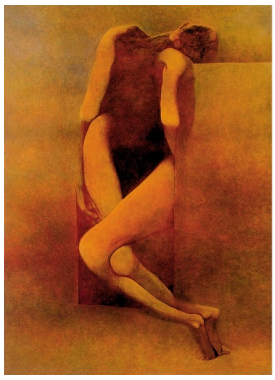
[1] https://ellisalicante.org/

algorithms because they equate it with pornography, especially if it is female content. And there are various ways of censoring it: there is an explicit censorship method that consists of not allowing that content to be uploaded, with the impact that this has on the artists, who often find themselves censored, not only in terms of content, but even expelled from social media platforms; there is another more perverse way of content moderation known as ***shadow banning,*** in which there is no explicit notification that your content has been censored, but simply that nobody sees it: it is shown to zero people or very few people, because these content moderation algorithms that also decide what content is promoted and what content is not promoted, what content is seen by whom (because each of us here is offered different content), so there is no explanation and no sign of being censored: it is *de facto* censorship because the content is not seen by hardly anyone or by anyone, and the impact that this has for the artists.

In my laboratory we became concerned about this challenge, because it is a little known reality, we became one of the few groups in the world that are investigating this issue. Before briefly explaining the work we have done, I want to show some examples of artistic works on WikiArt (which is like Wikipedia but for art) where, using three state-of-the-art porn detection algorithms, all three, and there are more examples, agreed that some of these works of art were porn and some of these works were art, with the understanding that all of them are art, they are famous WikiArt works.

Let us play a game to determine whether we humans are able to understand according to what criteria these algorithms decide whether a work is art or porn. So, I am going to show the images and ask, for each image, whether you consider it to be art or porn.

Art or porn?



Porn

Art

Source: Images from WikiArt

Who thinks this could be considered porn by an algorithm? Nobody.

In this case, all three state-of-the-art algorithms concur in identifying this work

as porn. There are examples where there is some discrepancy between the algorithms but, in this case, they all considered it to be porn.

Regarding the second image, who thinks an algorithm could conclude this is porn? A minority, but a few more people. Algorithms consider it art.

Art or porn?

Art

Porn

Source: Images from WikiArt

This image on the left, who thinks an algorithm could conclude this is porn? A minority of people. It is considered art.

What about this last one?

Porn.

The aim of this experiment is to illustrate the **arbitrariness of algorithms,** because it is extremely difficult to understand why some images are considered porn and others, art.

This is the situation in which many, many artists find themselves today.

To illustrate the impact of this arbitrariness on the part of content moderation algorithms, in 2021 museums in Vienna revealed that they were frustrated. They wanted to share their paintings on the most popular social media and were constantly censored. They could not share works because they were considered pornographic and banned. They then announced that they were abandoning all social media platforms, Instagram, Facebook, etc. and that they would only create and maintain an account on *OnlyFans*, the only social media platform that allowed them to display artistic content by Modigliani, Schiele or Munch. We laugh, but this is a real social problem and a big cultural problem. For artists as well. I do not know if any of the artists who are here with us today have been censored. We have carried out a qualitative study[2] with artists who have been

[2] Riccio, Piera, Thomas Hofmann, and Nuria Oliver. "Exposed or erased: Algorithmic censorship of nudity in art." *Proceedings of the 2024 CHI Conference on Human Factors in Computing Systems*. 2024.

censored, from various visual arts, to understand the impact this phenomenon is having and also to look for solutions.

I would like to share some of the reflections from this study:

Firstly, the impact is individual, social and collective. At the individual level, there is a direct **economic impact,** obviously in terms of lost opportunities. There is also a very strong **emotional and psychological impact,** because this phenomenon is a phenomenon that happens with great opacity; we are seeing it with these examples, you do not know why you are being censored, but you may not even realize that you are being censored if you are being shadow banned, so nobody sees your works, nobody likes your works, nobody buys your works and you think you are a very bad artist, but the reality is that nobody sees them and this is something that is really very perverse.

And it also has a **creative impact,** which is one of the most serious. We carried out this project in collaboration with *Don't Delete Art*[3], an initiative promoted in the United States by the *National Coalition Against Censorship*[4], with the aim of ensuring that this phenomenon does not occur. All artists, or at least most, recognized that algorithms were impacting their creative expression. To avoid finding themselves in this situation, many no longer worked with the artistic nude. They said, "it is not worth it to me because I do not want to risk being in this situation, so I am giving up artistic nudity". They self-censored. They used other tricks, for example, they pixilated those parts they thought might be controversial or occluded them, that is, they changed their own artistic practice so that the algorithms that are judging human art would not censor them.

And also, and this is also very interesting, we find a number of **biases in the algorithms.** Not only gender biases, which, as I have stated, there are. Indeed, most of the censored content is female nudity, but we also notice artistic biases. Thus, the most censored medium is photography, because it is, evidently, the most photorealistic art and, therefore, the one in which algorithms are most likely to make a mistake and consider it pornography. So, there were artists who even stopped working in a certain artistic language to avoid this situation.

And finally, we find the **social impact:** artists conveyed deep concern for younger generations because of the distorted vision they are receiving about nudity being equated to pornography; because of the impact this phenomenon can have, especially on women, by making the naked body taboo and the impossibility of appreciating artistic works where nudity is shown, which, as we know, has been an extremely frequent and relevant theme in the history of human creativity.

From a technical point of view, it is curious that none of the artists thought that algorithms were the cause of this censorship. Those of us who create algorithms want to invent **algorithms** that are ***Art-aware,*** that have the sensitivity to discern which expressions are artistic[5]. Interestingly, most of the

[3] https://www.dontdelete.art/

[4] https://ncac.org/

[5] Riccio, Piera, et al. "Algorithmic Censorship of Art: A Proposed Research Agenda." *ICCC*. 2022.

artists did not think it could be a technical problem, as they also recognized that a lot of quite pornographic content is published and disseminated that is not censored, for example, if published by Kim Kardashian. That is, there are some "white lists", there is a double standard that governs where economic interests converge: if it is content that is going to generate large revenues for the platforms, in a totally opaque way, these are much more lax with the concept of pornography, and that is something that is happening in a completely unseen manner, so that the artists did not think that it was the algorithms that were responsible, but a combination of the algorithms with the economic interests of the platforms to which all this content is uploaded.

However, being experts in artificial intelligence, we have set out to investigate how to improve content moderation algorithms so that they are much better able to discern between pornographic and artistic content. And one of the most promising areas, where we have achieved substantially better results than the state of the art is by using not only visual content, but also by going to the context, taking it into account through textual descriptions that add other information to complement the visual content.

And finally, I would like to end by sharing one of the observations that derive from all the work we are doing on the intersection between artificial intelligence algorithms and art: I think we are simplifying and reducing the concept of art, because we are focusing, exclusively, on the object, on the product. No artist who is asked what art is will say that art is the painting or sculpture which is the result of their work. Artists say that art is their way of interpreting life, their way of conveying their emotions, their way of conveying a message to society. In other words, art is intentionality, it is the context, it is the message, it is the process. And something emerges from this process, a result which, in reality, is not art. While algorithms have neither intentionality, nor process, nor message, nor purpose to transgress or provoke, but simply generate pixels that reproduce an artistic work. It seems, then, that there is an important social reflection to be done in relation to what art really is and whether we are reducing art only to the work, to the result, because, in that case, we are simplifying, greatly reducing what art is, which, in short, is the fruit of human expression and the translation of feelings, of human ideas into a certain physical format.

Finally, I would like to share, especially with artists, our website *StopArtCensorship*[6], where anyone who has seen their art censored can upload censored works because, in order to improve the algorithms, we can fine tune the functioning of these large neural networks to make them more sensitive to art and, to do that, we use examples of censored art in order to train them to have the capacity to discern what is not really porn, but art.

Thank you very much.

Marisa Castelo: I have a question following on from what you have said, before I move on to the rest of our friends.

You are a person who works in the world of technology, driven by the desire to improve algorithms. Of all that you have said, what I find most appalling is that the people who

[6] https://ellisalicante.org/censorship

are censored do not know that they are being censored. Are you working on any legislative initiatives of any kind? Do you have any lobby or institutional support to push for any legislative or regulatory changes that would at least prevent this shadow censorship? Because it is the cruelest thing that you publish a work, you think you are terrible and you even dedicate yourself to something else when you do not really know if you are successful or not because what happens is that you are being censored. Are you working on that?

Nuria Oliver: We collaborate with *Don't Delete Art*, which does a lot of activism in this regard.

The Digital Services Act[7], contains a number of provisions that require greater transparency with regard to content moderation, while providing mechanisms and empowering certain bodies, organizations and associations with the knowledge and competence to detect and report erroneous or unjustified content moderation decisions to make complaints on behalf of the recipients of the service to guarantee freedom of speech and information in general, imposing a duty on online platform providers to handle these complaints without undue delay. This is one of the demands made by the artists.

At ELLIS Alicante, we are doing everything within our power. As I said, we are one of the very few groups in the world doing technical research on this topic.

We will present the qualitative result of our research, in collaboration with *Don't Delete Art*, at the world's foremost human-machine interaction conference in Hawaii in May 2024. At the state or European level, for example, we would be happy to collaborate and join forces.

Marisa Castelo: I hope someone takes up this challenge because this is a fundamental issue.

I turn now to Fernando Carbajo: we have spent many hours talking about data mining, data scraping, for which we already have a Spanglish term, *escrapeo*, as they call it on the AI-themed podcast *Monos Estocásticos*, and I know that you are a person who, as a friend of mine used to say, "really knows their stuff". Fernando is Full Professor of Commercial Law and Dean of the Faculty of Law of Salamanca. I would like you to explain to us, specifically, what the data mining exception entails and how it affects the problem that brings us here, which is generative artificial intelligence and pre-existing intellectual property rights.

Fernando Carbajo: Thank you very much. Good morning. Many thanks to the SGAE, to the Fundación SGAE, to the Instituto Autor. Many thanks to you, dear Marisa, first of all.

To give an adequate answer to this question, I believe that we must approach it from a triple perspective: the principles, the law we have and the law we can have. *De lege data* and *de lege ferenda*, which we jurists always talk about.

From the beginning, we all know that ideas are not protected, but their expression and, when we talk about uses (in this case we are talking about data mining for the

[7] https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX:32022R2065

training of generative artificial intelligence models), we must reflect on whether in the training of generative artificial intelligence there are truly acts of reproduction, whether or not there is reproduction, and whether or not there are acts of communication and, if so, to what extent. In order to do so, we have to distinguish, as a first step, between **expressive and non-expressive uses;** that is, we must determine in principle whether a mining activity for the extraction and mass storage of data to be analyzed by algorithms and generate information that provides patterns, correlations and trends, "inter alia" (the Directive states, as this list is not exhaustive), is an expressive use or not of the works and related services that are the object of text and data mining.

If we stay with the first element, the input, the extraction of content from online sites for its "decomposition" into binary codes (data) represented in tokens and its subsequent analysis and tagging for storage in a gigantic database that is only accessed by algorithms for dataset training, that is, this process in which several successive acts of reproduction occur from a strictly technical point of view, does it represent an expressive use of works and related services?

The fundamental question is the following: if copyright (and related rights) does not protect ideas, but expression, do acts of reproduction in which an expressive copy of the works or related performances does not take place, in a way that can be appreciated by the senses of human beings, really constitute acts of reproduction subject to the exclusive right of the rightsholders?

We cannot give a full answer to this if we do not trace a traceability link between input and output, between the training-learning process and the generation of output-content by generative artificial intelligence models.

If in the output, there is no trace of the related work or performance stored in the database, it would be a non-expressive use. So, is there reproduction? Yes, but it is an instrumental reproduction, a technical reproduction. On the other hand, if an expressive use is found in the output, even if it is a fragment of the work or related service used for the training of the machine, we would undoubtedly be dealing with an expressive use and, therefore, with an act of reproduction subject to the exclusive right of the rightsholder, but we may find that the defendant invokes the parody exception or the pastiche exception, or even invokes a flexible copyright, that is, that they allege that such use is minor or incidental and that it does not harm the normal exploitation of the work, nor does it prejudice the legitimate interests of the author. That is, the inverse application of the three-step test that we have seen in Supreme Court judgments No. 172/2012, of April 3, 2012 (MARIO v. GOOGLE-SPAIN S.L.)[8]; of the CJEU, of June 3, 2021 Case CV-Online Latvia (C-762/19)][9] or No. 11/2014, of the Commercial Court No. 9 of Barcelona, of January 11, 2024 (VEGAP v. Mango)[10]. With these precedents, we can expect

[8] https://www.poderjudicial.es/search/TS/openDocument/2172fa59b81d5ee7/20120618

[9] https://curia.europa.eu/juris/document/document.jsf?text=&docid=244302&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=17740741

[10] https://www.poderjudicial.es/search/AN/openDocument/44a19cd396e94c5da0a8778d75e36f0d/20240131

different responses from judges and courts in the immediate future.

In the most evolved generative artificial intelligence models, it is not common for the output to include total or partial reproductions of the input used in the training, without prejudice to the possibility of identifying styles or ideas of certain authors or creative movements. But, as already mentioned, neither ideas nor creative styles are protected by intellectual property rights.

However, regardless of whether there is an expressive or non-expressive use of pre-existing works or performances by generative artificial intelligence models, there is no doubt that this is a **parasitic activity.**

And so we go to the second perspective: What Law do we have?

Since 2018 Japanese copyright law has a limit covering acts of reproduction for purposes other than the "*use of a work for non enjoyment purposes*", Article 30(4)(ii), as well as "*minor exploitation incidental to computerized data processing and the provision of the results thereof*", Article 47(5); that is, non-expressive reproductions of works and performances that are carried out in the processes of scraping, computing and storage of protected content, as well as merely incidental reproductions that may be made in the data computing process, are left out of the exclusive right. In the United States there is an intense debate, transferred to the courts, as to whether the ***fair use doctrine* or general fair use exception** provided in Sect. 107 of the Copyright Act can be applied to these non-expressive acts of reproduction, especially because most of the uses carried out by generative artificial intelligence models can be considered transformative uses in which the work does not appear in the results or does so in a minor or incidental manner in relation to the whole of the content generated by the machine, so that it does not affect the actual or potential exploitation of the works in the market.

Thus, in both Japan and the United States, priority is given to technological evolution and the development of generative artificial intelligence, which is seen as fundamental for the immediate social and economic development of the nation, rather than to the protection of intellectual property rights. And among the different arguments, as we can see, the difference between using the work as a work and using the work as a set of data only readable by machines. In other words, the difference between expressive uses that allow the perception and enjoyment of the works by human beings and non-expressive or "de-intellectualized" uses of the works decomposed into data, also saving possible minor or incidental expressive uses of the protected contents because they hardly affect their market value.

However, in the European Union, we have an exception or limitation of "text and data mining", which, although typified at a time before the emergence of generative artificial intelligence and, therefore, in a context more typical of "machine learning" that produced only predictive results through the increased capacity of calculation, it is considered that it can be applied *mutatis mutandis* to the context of the training of the most developed models of generative artificial intelligence. These are the limits or exceptions to text and data mining set forth in Articles 3 and 4 of Directive 2019/790, of July 17, on copyright and related rights in the digital single market, incorporated into our legislation in Article 67 of Royal Decree-Law 24/21, of November 2.

Article 3 of Directive 2019/790, of April 17, on copyright and related rights in the digital single market, allows the activity of text and data mining, which implies an exception to the reproduction right of authors and holders of related rights, for research purposes, and with the only obligation of storage for the information of the contents used in the "scraping" process. It is therefore a pure exception. But the problem lies primarily in the text and data mining limit provided for in Article 4 of Directive 2019/790, which deals with text and data mining by private entities for purposes other than research.

The Directive speaks of "exceptions or limitations" for text and data mining. **Exception or limitation?** An exception is an unremunerated or compensated limit; a limitation is a remunerated or equitably compensated limit. The Directive seems to give a choice. Spain opts for the exception in both cases, but subject to a caveat in the case of non-scientific uses: the exception will not apply *"when the rightsholders have expressly reserved the use of the works to machine-readable media or other suitable means"*. It is, therefore, a pseudo-limit (similar to the press clipping limit of Article 321(2) of the TRLPI (*texto refundido de la Ley de Propiedad Intelectual* [revised text of the Intellectual Property Law]), since the effectiveness of the legal license implied by the exception is conditional upon the rightsholders not reserving their rights (opt-out), in which case the acts of text and data mining (and, by extension, all subsequent acts of reproduction necessary for the training of the algorithms) would be subject to the *ius prohibendi* of the rightsholders.

Therefore, the European Union is clearly committed to protecting intellectual property rights as a priority in the process of technological development. A laudable legislative policy decision, but one that could hinder the competitiveness of the European technology industry, compared to the lesser objections of the United States, China or Japan.

Moreover, legal regulations are far from clear, which is detrimental to legal certainty and to the interests of all those involved. On the one hand, it is not clear whether the text and data mining exception is applicable as such to the training process of generative artificial intelligence, which is much more complex than the mining or scraping process itself. In fact, there are authoritative voices that deny the application of the exception of Articles 3 and 4 of Directive 2019/790 to the training process of generative artificial intelligence models, limiting its application if at all to machine learning procedures. On the other hand, it is not clear how the reservation of rights should be exercised, whether through technological measures such as robots.txt or similar or through a mere written statement on the websites denying the use of the website and its contents for algorithm training purposes through automated processes.

Both issues are likely to be the subject of judicial decisions by the courts of Member States and the CJEU itself in the near future. However, the fact that Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024 laying down harmonized regulations in the field of artificial intelligence openly expresses the need to respect the text and data mining provisions provided for in Articles 3 and 4 of Directive 2019/790 (recitals 104-108), obliging providers of artificial intelligence models to establish guidelines to comply with Union law on copyright and related rights, and, in

particular to detect and comply, through state-of-the-art technologies, with a reservation of rights expressed in accordance with Article 4(3) of that Directive (Article 53(1)(c)), as well as to draw up and make available to the public a sufficiently detailed summary of the content used for the training of general-purpose artificial intelligence models (Article 53(1)(d)), suggests, on the one hand, that the European Union legislature has assumed that the text and data mining provisions provided for in Directive 2019/790 (pure exception in case of research purposes and exception subject to reservation of rights in all other cases) is fully applicable to the training of artificial intelligence models, even if the mining as such only covers the initial stage of the process, and, on the other hand, that the reservation of rights that, where appropriate, each rightsholder decides to make may be either through the implementation of technological measures or through simple declarations included on the website, since the legal obligation to develop state-of-the-art technologies to detect and comply with the reservation of rights made by rightsholders or their assignees is transferred to the artificial intelligence providers.

In this context, in the absence of an opt-out by the rightsholders, the text and data mining exception applies. But only for reproduction? It is true that Article 4 of Directive 2019/790 only speaks of an exception to the **right of reproduction,** and we all know and we are told by the three-step rule (Article 55 of Directive 2001/29) that any exception or limitation must be strictly defined and restrictively interpreted. That is the theory. Then, the pressure of technology is such that, when it comes to interpreting, judges are more flexible, especially if they are predisposed to being flexible due to the work and leniency of the legislature, because Article 22 of Directive 2019/790[11], when defining text and data mining, speaks of extracting and storing to generate information. And what is the purpose of generating information? Obviously, an act of communication is implicit. What happens is that, strictly speaking, there will only be **communication to the public** when the output contains an expressive reproduction of works or related services used in the training. If they do not appear, it must be concluded that there is no public communication as such or, if at all, it must be presumed that it exists implicitly but that it is authorized by the legal license that implies the exception or by the contractual license that, if applicable, is granted by the rightsholders.

However, if we say that this exception reaches reproduction and public communication, some may say that the three-step rule must be applied again, since this may jeopardize the normal exploitation of the works and the legitimate interests of the rightsholders, and we are back to the same game.

If I were the lawyer for the defendant (the provider of an artificial intelligence model), I would invoke the three arguments I have been mentioning: non-expressive use, first of all; pastiche, if there were an expressive use, and the flexible copyright, to see if it works, that is, the reverse application of the three-step rule, and create a predicament for the judge, if necessary. Recall that we

[11] "text and data mining" means any automated analytical technique designed to analyze text and data in digital format in order to generate information including, but not limited to, patterns, trends or correlations.

have a judgment of the Supreme Court of April 3, 2012 in relation to the Megakini website[12], recall that we have a judgment of the CJEU in the Case CV Latvia Online (Melons)[13] that does not rule very clearly but does state the same thing. Therefore, it is logical that publishers, production companies and even copyright collection societies mandated to do so make use of the exclusive right provisions.

What scenario would we move into here? A **licensing scenario.** Imagine the transaction costs when artificial intelligence applications have been democratized. Imagine the transaction costs to negotiate this. Is it a parasitic use? Yes. What happened to the platforms? The platforms stated, "we don't reproduce, we don't communicate; it is the users". And, in the end, the Court of Justice in *The Pirate Bay*[14] case and, later, the European Parliament and the Council, in Article 17 of Directive 790/2019 stated do not reproduce, do not communicate, but provide the means for others to do so; therefore, we say that they communicate and that is it: let them negotiate licenses and share the profits among all those who contribute to generating them. Here we could reach a similar conclusion, that is, moving from a scenario of prohibitions of use to one of equitable sharing of profits in the value chain generated by generative artificial intelligence models.

But how is this managed? Let us not forget that intellectual property protects creators, is an incentive to creation, is an incentive to investment, to dynamic competition, that is, to competition based on innovation, but the classic incentive-access dilemma is not correct: it is a property-access dilemma, because, in the access to protected content, there are also incentives to incremental innovation that seeks to continue generating new content and exploitation benefits to continue investing, so that there is more market, so that there is more culture, so that there is more technological, economic and social development.

It is necessary to seek balance and I do not believe that the exclusive right derived from a massive exercise of the opt-out will lead us to a balanced scenario, but rather to judicialize massive and difficult to control uses, which give rise to market failures and problems of procedural economy. By this I am not saying that we open the door to everything, I insist; that is, to a massive and indiscriminate use without any compensation of content protected by the providers of generative artificial intelligence models. I start, and I think the legislature does too, with the principle that there is a parasitic use in artificial intelligence as it happens also in the context of digital platforms that allow users to share content online. Who is behind artificial intelligence applications, what are they looking for? Obviously, a direct or indirect economic return. They provide the means for others to do or they do it themselves directly in search of profit.

But let us not forget that we live in a global world, in a scenario of global competitive-

[12] https://www.poderjudicial.es/search/TS/openDocument/2172fa59b81d5ee7/20120618

[13] https://curia.europa.eu/juris/document/document.jsf?text=&docid=242039&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=388199

[14] https://curia.europa.eu/juris/document/document.jsf?text=&docid=191707&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7917955

ness. If the United States has Fair Use, and it is likely that in the *New York Times* case as in many other similar cases the existence of transformative uses, of an expressive use, will be affirmed; if Japan, in Article 34 of its copyright law provides, using a curious title, for "*exploitation that involves not using the ideas or feelings expressed in the works*", with the caveat that damage is caused to the work or to the author; can Europe go to firm exclusive right provisions? It would lead to a significant competitiveness deficit in artificial intelligence in Europe.

So, let us move to the third point or third perspective: *de lege ferenda*, from the law we may have, what could be the appropriate legislative policy decision to achieve a balance of interests that satisfies all the agents involved and promotes the technological development and competitiveness of European industry?

What is the solution if we want to properly balance a protection in the form of at least a fair return for rightsholders, authors, performers, production companies, and broad access to encourage incremental innovation? That is, creativity, innovation, investment, competitiveness, dynamic competition. In my opinion, this objective can only be achieved by going to a **scheme of limits subject to equitable compensation, of compulsory collective rights management.** This solution may prove to be the most effective and efficient way to balance interests in uses of massive content exploitation, guaranteeing access to content to facilitate innovation and the development of generative artificial intelligence in terms of free competition, while ensuring a fair return to all rightsholders, and not only to large publishing groups and music and audiovisual production companies.

Now, if, as I propose, this remuneration is to be managed by copyright collection societies, how is it to be distributed? There we have the recently approved Artificial Intelligence Regulation, which imposes on providers of generative artificial intelligence models a series of obligations, of transparency requirements, which make it mandatory to present a summary of the content used to train the artificial intelligence model within the general obligation to adopt guidelines for compliance with Union law on copyright, in particular to identify and respect the reservation of rights provided for in Article 4(3) of Directive (EU) 2019/790 of the European Parliament and of the Council.

Therefore, whoever is behind an artificial intelligence system has to inform about which works and related services are stored in the dataset after a *scraping process, distinguishing between works and services with current protection, those that are already in the public domain and those that, if applicable, are covered by a legal limit such as parody, pastiche or any other that may be applicable*. This information can be used to support the return of a compulsory collective rights management remuneration right, but also, in the event that the foregoing is not achieved, of a system or mechanism of distributable profits from non-exclusive licenses of an exclusive right, with the weakest parties in the sector (authors and performers) being able to activate the remuneration review actions provided for in Article 18 of Directive 2019/790.

This decision is of great importance because, if we go to a licensing scenario by the application of the opt-out, who will manage the granting of these authorizations and the corresponding collection? Only publishers and production companies as assignees of authors' and performers' rights and holders,

if any, of their own related right? And, authors and interpreters, what will they get? We are seeing it in the very peculiar regulations regarding digital intermediation platforms, where authors and performers do not receive a fair return for the massive and indiscriminate use of their content.

Could authors (and, where appropriate, by analogy, performers) refuse to allow their works and artistic performances to be used for the training of generative artificial intelligence models, claiming that it constitutes a non-existent or unknown form of exploitation at the time of assigning their rights to publishers and production companies, as provided for in Article 43(5) TRLPI, thus preventing publishers and production companies from exercising the opt-out and negotiating licenses without their prior and express authorization? In this case, the development of artificial intelligence in the EU would be put at serious risk, so I understand that it is better to seek formulas that satisfy the different interests at stake, allowing the competitive development of artificial intelligence and ensuring a fair return of part of the benefits for all rightsholders.

In the case of maintaining the opt-out system in which the reservation of rights and management of authorizations to the providers of generative artificial intelligence models is made by the publishers and production companies, it could be considered to establish, at least, residual remuneration rights for authors and performers of compulsory collective rights management.

If we move towards compulsory collective rights management involving the various copyright collection societies of the various intellectual property subsectors, a balance could be sought in the negotiation with the suppliers of artificial intelligence models or databases on which these artificial intelligence models are based (as they do not necessarily have to coincide); and collective negotiation could be sought at the national level, or even at the pan-European level. Therefore, I believe it is the most balanced system and, as such, the fairest, even though there may be practical problems (technical and political) for its implementation.

As an alternative, one could also think of a system of **collective licenses with extended effect,** provided for in Article 12 of Directive 2019/790 on copyright and related rights in the digital single market, which would allow the collecting societies representing each subsector, and mandated by the respective rightsholders for the management of non-exclusive licenses to authorize the training of artificial intelligence, to manage authorizations with the providers of datasets or artificial intelligence models on behalf of all the rightsholders corresponding to their subsector, even if they are not shareholders of the entity, subject to the right of the rightsholders to exclude their works or services from the granting of licenses, also exercising a reservation or exclusion of use of their contents from the training of artificial intelligence models.

The authorizations granted under provisions for compulsory collective rights management or licenses of extended effect would serve to store contents in the dataset for the training of artificial intelligence models, but I understand that the use of those contents for making available the results offered by the artificial intelligence program or model would be implicit, provided that no expressive reproductions of specific works or services appear in those results. In the event that total or partial reproductions of works

and performances do appear in the contents offered by the artificial intelligence model, I consider that the providers of the model in question should negotiate additional licenses or authorizations with the rightsholders or with the collecting societies representing their interests, unless the authorization for the training input also includes the expressive use, even fragmentary, of contents in the final output.

In the event that legislation evolves towards schemes or systems of remunerated or equitably compensated limits, some propose that compensation or equitable remuneration should not be distributed among rightsholders according to the greater or lesser use made of their works or performances, advocating the creation of a **solidarity fund** available to authors and performers who may be more disadvantaged by the growth of generative artificial intelligence (illustrators, screenwriters, studio musicians, etc.), since generative artificial intelligence models are in direct competition with creators and performers.

This possibility seems too idealistic to me, not to say naïve, because to whom would this fund be distributed? Would it be a social benefit fund? This would have to be carefully considered, but it seems very unlikely that it could succeed.

Marisa Castelo: Thank you Fernando. I think you have little faith in collecting societies.

Fernando Carbajo: No, no. I have a lot of faith in them.

Marisa Castelo: It may appear that you do not consider them capable of licensing and management. We are celebrating the 125th anniversary of SGAE. At SGAE, 125 years ago, when it was founded by playwrights, scores were brought to and from theaters by animal traction, food and drink stains were cleaned, traces left behind by insects were cleaned and, since those early days, SGAE has become capable of licensing extremely complex uses and carrying out the distribution of rights. Therefore, regardless of the fact that I may share the conclusion of your reasoning, I do not believe that opting for one system or the other depends on the capacity of the collecting societies, which has already been demonstrated.

Regarding the model to adopt, I think more relevant is the answer to an "existential doubt" that I have always had: once an artificial intelligence has been trained with a repertoire of works, if an owner exercises their opt-out right, is it effective? Or has the damage already been done? I believe that, from this point of view, it is wiser to adopt one or the other system.

Nuria Oliver: We are talking about neural networks that have hundreds of billions or even trillions of parameters. In those trillions of parameters, your works have impacted the value that some of those parameters have when a certain prompt is entered. It is therefore impossible to reprogram them at a later time and give the command: "now I want to remove Marisa's works" or "I am going to change these parameters". It is no longer possible.

And there is another technical challenge, related to *The New York Times* case: there is also no guarantee of non-memorization. That is, in *The New York Times* case, the lawsuit is directed against Microsoft and OpenAI, for training chatbots that competed with the newspaper, reproducing paid articles, which could only be accessed by paying a

subscription, because these networks also memorize, but there is no way of knowing what they have memorized and how much they have memorized, nor in which cases they will reproduce something they have memorized or not, because they are such complex networks and the scope of possibility of the output they produce is practically infinite, depending on the prompts we enter, that it is really very difficult to offer any kind of guarantee as to what content they have or have not memorized. Technically, it is impossible. So, from a legal point of view, this challenge has to be addressed, because it is not going to be possible to prove whether there is memorization or not.

Fernando Carbajo: This is all the more reason for the proposal I am making. And my trust in the collecting societies is absolute. In fact, this business does not work without collecting societies. But, if we go to a system of exclusive rights subject to license by exercising the opt-out, *a priori* or *a posteriori*, who is going to manage this? The collecting societies or the large publishers and production companies? Whether publishers and production companies manage how to ensure an adequate return of part of the profits to authors and performers. Has it been possible to guarantee this fair return on streaming and content sharing platforms? I do not believe that the remuneration review possibilities provided for in Article 18 of Directive 2019/790 offer many real guarantees for authors and performers. I understand, therefore, that a fair distribution of the amount obtained from the use of protected content by artificial intelligence can only be guaranteed with the intervention of collecting societies, and I also believe that it will only be truly effective if collecting societies from all sectors are involved, which can only be achieved with compulsory collective rights management systems.

Marisa Castelo: Whether an exclusive right and license system is established or a remuneration system is imposed, collection and distribution will only be possible with guarantees through collecting societies. It will be necessary to determine how to carry out the distribution, because it may be that we will enter into scenarios that the current technology allows at any given time. I do not know if my friend Anguiano, who is the *blockchain maestro*, could tell us if this technology could be applied to distribution or not, or if there could be any other way to improve these processes.

Nuria Oliver: There is one more factor that has not been mentioned and that, technically, is clearly elusive: the AI Act, when referring to what it calls *General Purpose AI*, which is Generative AI, one of the requirements it establishes is that a watermark or some kind of clear indicator that the content has been synthetically generated using generative artificial intelligence must be inserted. This is very complicated for text. If you ask the AI to write you a poem, what is it going to put in each word? *This is fake, this is fake, this is fake?* It may be easier in visual content or audio content, but in any case, if you want to produce "malicious" content and not use a *watermark*, technically it is easy to find a way to remove it. This is, in principle, one of the solutions envisaged in the AI Act to, above all, minimize the impact of this type of AI-generated content in the context of *deepfakes*, to moderate its influence on the formation of public opinion, electoral processes and so on, although it also has an impact on the creative context, because, if the output of a creative process must be marked with the text *"generated by DALL-E"*, this requirement somehow ruins the image. I do not know if the protection of creators is considered to prevail here, I do not know.

Marisa Castelo: Perhaps we should distinguish, on the one hand, what management system we give ourselves, whether it is a licensing model or a remuneration model, for the use of the works that have trained the AIs, and, on the other hand, what rights are to be recognized on the output, which is also a matter for this Congress.

And that is what the Congress is all about: that two experts, colleagues and residents in Salamanca and Madrid, present their points of view, precisely because, moreover, there are many voices that advocate a remunerative solution. As you know, there is a bill by the political group *Renaissance*, led by Macron, set forth on September 12, 2023 in the French National Assembly[15], which proposes that all rights of all eventual holders involved in the uses of AI be subject to collective rights management. This is an example of an extreme position.

In any case, if there is no technical possibility for AI models to "forget" or omit works and content they have been trained with, it is too late because, by now, they have already devoured everything that exists.

Fernando Carbajo: Indeed, and furthermore, I insist on negotiation. If provisions regarding exclusive rights subject to licensing is introduced, publishers and production companies may or may not resort to voluntary collective rights management. This was the case when Article 17 of the 2019/790 directive was negotiated, on the *use of protected content by online content sharing service providers, which corresponds to* Article 73 of our Royal Decree-Law 24/2021, which establishes that online content sharing service providers must obtain prior authorization from the rightsholders referred to acts of public communication to carry out such act of exploitation.

This was the basis of a compulsory collective rights management system, in which the collecting societies would be the sole interlocutors. The aim was also to avoid competition problems, both upstream and downstream.

But, if we move to exclusive right provisions, a large publisher or a large producer who accumulates a lot of works may consider that they do not need collecting societies. In that case, what will go to the authors and performers? This problem has been arising with platforms and is the actual situation currently with generative artificial intelligence as well. However, if a compulsory collective rights management system for a remuneration right or, if desired, of an exclusive right is established, there will be a greater role for collecting societies and the guarantee of balance that they offer.

Marisa Castelo: Undoubtedly, we are all united by the shared conviction that there must be a fair remuneration for the rightsholders of pre-existing works and this starting point is already a step forward that I trust all the players involved will be able to see because, in the end, when it is necessary to regulate any area, it is because the sector is not self-regulating, which is desirable, and because there are large corporations that may be guilty of corporate greed. This is a personal opinion of mine, if I may say so.

[15] https://www.assemblee-nationale.fr/dyn/16/textes/l16b1630_proposition-loi This proposal fell by the wayside in 2024 with fresh elections to the French Assembly.

Antonio Muñoz Vico is a lawyer, a recognized expert in the audiovisual sector, among others, and he also works a lot with production companies in the United States, so he knows perfectly well the reality of audiovisual production both there and here where, as you know, we have very different legal systems. I would like you to explain to us, please, how generative artificial intelligence is impacting the audiovisual sector and, also, in relation to the famous screenwriters, actors and actresses strike, how much has been due to the impact of artificial intelligence and what demands have been achieved.

Antonio Muñoz Vico: Good afternoon. Thank you very much for the invitation, Instituto de Autor, Fundación SGAE (SGAE Foundation) and SGAE (Sociedad de Autores Españoles [Society of Spanish Authors]). It is an absolute pleasure to be here, at this roundtable, with such respected and prestigious people.

Generative artificial intelligence is impacting all productive sectors. Also the audiovisual sector. The entertainment industry was already using artificial intelligence in the production of video games, in the improvement of special effects, in post-production techniques and in the recommendation algorithms of streaming platforms. What is new is that we now have very powerful tools that were undreamed of just a few months ago.

What is perceived in the entertainment industry is a great expectation of the possibilities that generative AI can bring to a sector where, as we know, producing a feature film, a series or an animated movie is very expensive and time-consuming. Not everyone has the possibility to access the production ecosystem or to consolidate as an author, creator or producer.

When a new technology is introduced, this expectation always translates into two very human feelings: fear and attachment. Umberto Eco highlighted this dichotomy in his work "Apocalypse Postponed" (1964). Looking back, every new technology arouses visceral hatred and unwavering attachment. And this gives rise to political debates and others that perhaps move more into the legal sphere.

In Europe, there is reason for optimism because the rules of the generative AI game are being set. We jurists are there to order in the chaos, to order society through laws, judgments and public and private consensus. Our contribution to society translates into defining the rules of the game. And, fortunately, in this area we already have clear rules because the European legislature was very far-sighted in the 2019 Directive and regulated the text and data mining exception.

It is true that, when this exception was introduced, generative AI was not yet being thought of: the potential of technologies such as *ChatGPT*, *MidJourney*, *DALL-E*, *Bard*, etc., was unknown. But it is also true that, in 2018, the impact studies that the European Parliament requested from academic experts (including Eleonora Rossati, professor at the *London School of Economics*, or Professor Geiger, of the University of Strasbourg, etc.) pushed for expanding the scope of the only article in the proposed Directive that then regulated the exception of text and data mining, and which was circumscribed to research bodies and institutions responsible for cultural heritage for scientific research purposes (Article 3). The various possibilities suggested by these experts closely resembled the exception finally regulated in Article 4; an exception which, however, has given rise to many discus-

sions within the legitimate legal debate as to whether or not it complies with the three-step rule of the Berne Convention.

In any case, the European legislature, who at that time was still unaware of the full potential of generative AI, in 2024 only yesterday, with the approval in the plenary of the European Parliament of the Artificial Intelligence Regulation, seems to have legitimized the application of the text and data mining exception to this new technology, so that the rules of the game would be clear in the Union. Without prejudice to the *de lege ferenda* proposals that may come, we have an artificial intelligence regulation that establishes the respect of intellectual property rights by-design and transparency obligations that entail, among others, the publication of summaries with the training data that, although they do not require a work-by-work identification, will provide certainty about the protected sources used in the training of AI systems.

And I insist that having clear rules of the game is something we can and should celebrate.

The coexistence of the exception contained in Article 4 and the power to establish a reservation of rights is intended to facilitate remuneration agreements for the use of works and services. In this way, the European legislature has sought to strike a balance between the protection of intellectual property rights and technological developments. Whether this balance is successful or sound will depend on how these reservations of rights are managed and how contractual licenses are articulated.

And here the European Union has an opportunity to harmonize the protocols and standards to be used to make these reservations of rights (opt-out). Right now, different AI model vendors offer their own opt-out solutions. If we want the "Brussels effect" to work and export our legal system to other jurisdictions, the EU must work towards the adoption of **shared protocols and standards.**

From this point of view, Professor Martin Senftleben of the University of Amsterdam recently published an article that emphasized an interesting idea: for artificial intelligence to be able to convey the values of European culture, the richness and cultural and linguistic diversity of Europe, it must be trained with the works of European creators and artists. This is also, to a certain extent, the position defended by the director of the Royal Spanish Academy, Santiago Muñoz Machado, on the RAE's LEIA Project[16]: just as, in the 18th century, the ancestors of today's academics standardized the human language, the language of machines should now be standardized. In other words, for artificial intelligence to offer linguistic levels comparable to those it has already reached in English, to offer the values that are specific to us, that **diversity** that is specifically European, linguistic and cultural, it will be necessary for there to be agreements between model providers and rightsholders that facilitate the training of these models.

The tension, as I say, will be resolved with the establishment of remuneration systems. Under the current provisions of the Regulation and Directive 790/2019, rightsholders are entitled to reserve their reproduction and extraction rights and negotiate licens-

[16] https://www.rae.es/leia-lengua-espanola-e-inteligencia-artificial

es with third parties. The critical proposals mentioned by Fernando Carbajo will have to be studied and debated when they arrive (in the national parliament, in the European Union, etc.) but, for the time being, we must operate with the possibilities offered by the current system. Because, if we take perspective and analyze the legal systems in our neighboring countries, we observe that the situation is not necessarily better than in Europe. In the United States, as Professor Jane Ginsburg warned us today, the situation is one of great legal uncertainty and will continue to be so until the courts provide answers to the question of whether model training is a "fair use". I like to say that we Europeans look to the legislature to resolve legal challenges, while Americans look to the judiciary. They trust in the case-by-case resolution of problems, in the fair use doctrine, in the assessment that judges make in each case; we trust in that abstract legal concept that is the legislature (and that is all good and well, until we put a face to some of our congressional representatives) and that provides predefined solutions in laws. But it is true that our system provides us with legal certainty and that is a certain advantage compared to the uncertainty that exists right now in the United States.

As to the question about the Hollywood agreements recently reached by the Hollywood employers' association with SAG-AFTRA (representing actors) and the WGA (for screenwriters), they are based on a relevant principle: **human presence in the creative process.** It ensures that the rights of screenwriters, for example, or their presence in the credits are not diluted by the generation of texts by artificial intelligence.

In the case of actors, their consent is required to create doubles and a specific remuneration is established. Furthermore, a very interesting (almost science fiction) classification is created depending on whether the actor is contracted for the film or if it will be their AI double who replaces them on set. Then there is the variant of synthetic actors, that is, artificially created actors unrelated to any known actor. As an intermediate case, there would be the synthetic actor who, although not representing a real actor, may retain recognizable features: imagine a synthetic actor combining features of Brad Pitt and Scarlett Johansson and playing the son of both in a fiction. If those traits were unequivocally attributable to Scarlett Johansson and Brad Pitt, you would have to have their permission.

Finally, Jane Ginsburg spoke about freedom of speech and how important the First Amendment is in the United States for the freedom of creation and the growth of the arts. In this regard, the SAG-AFTRA agreement establishes that consent will not be required, as it is not now, in cases covered by freedom of speech, such as caricature, parody, pastiche or biopics. In these scenarios, case law has already been advancing and broadening the scope of this freedom, even though no one likes to be caricatured or parodied.

Marisa Castelo: So, for example, if we wanted Marlon Brando to reappear as Jor-El in Superman 2, while Marlon Brando was still alive, would we have to ask his permission, or not?

Antonio Muñoz Vico: Very good question. If Marlon Brando were to reappear in a new Superman film, the SAG-AFTRA agreement provides that, even if the actors are deceased, the estate, legal representatives or even SAG-AFTRA itself would be empowered to authorize the creation of their AI doubles.

Marisa Castelo: What if Marlon Brando were alive? What if, because of a wild buyout that actors sometimes sign, he had relinquished this possibility? Or, because of this union pressure and negotiation, has it been reversed?

Antonio Muñoz Vico: Consent is the basis of the agreement reached. If Marlon Brando were alive, it would be up to him to authorize the creation of a new, synthetic character, as long as he was recognizable.

Marisa Castelo: Well, the strike has served its purpose, has it not?

Antonio Muñoz Vico: Different legal systems and different regulations. The agreements are always favorable to the industry.

Marisa Castelo: Thank you very much.

Fernando, I am going to put you on the spot again, even though we agree on the vast majority of things. Do you think the outlook is good? Do you think it looks bad? Will it end up in court? What do you think?

Fernando Carbajo: Not so long ago we used to say that new technologies were not so new and now it turns out that they are brand new... The experience with digital, which is already long, shows us that, step by step, many times rightsholders, by filing a lawsuit in a specifically complex case, manage to take steps forward and pave the way for a legislative change. That judges only interpret the law and do not create it is a lie. Of course, in the *Common Law* system they create law, but we do too. One need only look at the case law of the First Chamber of the Supreme Court in many areas. And they contribute to taking steps forward because the law must be interpreted when it is to be applied, as stated in Article 3 of the Civil Code. The legislature, however, always has to lag behind. This is always people's criticism. Is it always going to react late? It is that it has to react late because, if the legislature anticipates too much, it is a disaster. So, the pros and cons of each regulation must be analyzed. How do you see the current situation? Obviously, I believe that in Europe there has to be a negotiation for an amendment of Directive 790/2019 on copyright and related rights in the digital single market. Could the opportunity provided by the artificial intelligence regulation have been seized? I believe there was debate on this issue, but there was no consensus. To be held at a later date.

And, in Europe, we will have to address this sooner rather than later. At the international level, I think that, as Professor Ginsburg has stated, an agreement at the WIPO level seems almost impossible.

Marisa Castelo: I fully agree. And, making more predictions and, although I know you are not a lawyer, but you know a lot about the United States, how do you think, Nuria, that the lawsuits filed against *MidJourney* and, with a broader scope, the conflicts of visual artists with artificial intelligences will end up? Do you think they are going to end up in *Pretty Woman* or *Richard III*?

Nuria Oliver: I really do not know. We are appealing a lot to the need for regulation, but I believe that we must not lose sight of a component that is perhaps not so developed now, but which is very important and historically has always been so whenever there have been technological developments that have had a profound impact on all areas of society in other industrial revolutions: the component of civil society.

I believe that we are not sufficiently mobilized as civil society in some areas, in rela-

tion to the impact that artificial intelligence is having, not only in the context of the creative industries, but in many others. And part of this failure to mobilize is the result of a lack of knowledge. That is why it is so important to invest in education, in actions such as this one, that explain what artificial intelligence really is, what it can do and what it should not do, what implications it can have for people, so that, as a society, we can mobilize ourselves. I believe that this aspect is the least developed right now, and it is very important.

In the creative context, I think there has been mobilization. We have seen it with the Hollywood strike, which quite an unusual phenomenon in the United States. They are not like France. And that strike continued for months. It has been an example of civil society mobilization, but it is important that these are **informed mobilizations.** Right now, there is a lot of misinformation about artificial intelligence, a lot of manipulation, which fuels apocalyptic visions about artificial intelligence, and we should not mobilize or make decisions if we do not know and are not well informed. I think this is a very important element.

Marisa Castelo: Thank you very much. We will now open the floor to questions.

QUESTION SESSION

Question 1

Thank you very much.

First of all, I would like to congratulate the speakers for their very interesting talks, which have dealt with many thorny issues. I address the panel in general, with a little emphasis on Professor Carbajo, who is the one who has addressed this issue, in which I agree that the right to equitable remuneration may be the simplest solution to this problem, because individual negotiations between authors and artificial intelligences are not viable due to transaction costs and the very different market power of the various parties, which would condition a somewhat unfair distribution of profits. As a pragmatic solution it makes sense. But, as was also addressed at the previous roundtable, it was, I think, Andy Ramos who said so, the material that artificial intelligence harnesses is "information about expression," in these words; not ideas, but how expression develops. This is still information that, in theory, is not protected by copyright, which is limited to expression. So, how do we articulate this right to remuneration? What is this remuneration about? I would like to know your view.

Fernando Carbajo: Good question.

We return again to the distinction between expressive and non-expressive uses. It is one thing to use the work as a work and another thing to use the work as data or to use data from the work. In a process of extraction, mass storage, automated, *a priori* we are using, above all, the data of the work, but we are seeing in practice that the work is also copied and that it can appear in the output. If we want to untangle this mess, we must dispense with this dichotomy, which is why I have spoken of legislative policy. Here, what is it about? We must open the doors to artificial intelligence, to which we cannot refuse, as digital experience has already shown us with many precedents.

What does artificial intelligence feed on? Of millions of copyrighted content. If we go to exclusive rights provisions and we have to look at the cases in which a limit or exception applies; the cases in which the AI has been trained with works in the public domain, or not; invoking flexible copyright, or not, it is crazy.

If we go to the recognition of a right of fair and equitable remuneration, which legitimizes the interests of one party and the other, and compulsory collective rights management, we seem to arrive at a more satisfactory solution.

And here, compulsory collective rights management is extremely important. The intervention of collecting societies is important for many reasons: for rightsholders, because it guarantees a fair return and, as for their rules for sharing that remuneration, in the case of associations, it will be their members who will establish their rules; also for competition, because if we establish an exclusive right and Warner or Universal refuse to license *TikTok*, it can create competition problems, whereas if *TikTok's* interlocutor is a collecting society, the collecting society is obliged to grant licenses or authorizations and, in the case of compulsory collective rights management, all the more so, except in very exceptional circumstances, so as to ensure that everyone has access. Warner or Universal could give access to a super-powerful artificial intelligence system that Microsoft is behind and deny it to a smaller one, causing competition distortions and problems.

The remuneration right, that is, replacing the exclusive right with a compulsory collective rights management right, guarantees a fair return to rightsholders and, moreover, by involving the various entities of the different subsectors, ensures free competition. If a collecting society were to set very high rates for this right of remuneration, there would always be recourse to the Spanish National Commission for Markets and Competition or to the first section of the Intellectual Property Commission in Spain, although we are not in the best shape for that, are we?

Marisa Castelo: Thank you very much. Thank you all very much.

Do collecting societies dream of electric authors?

The coming artificial intelligence: likely, certain or remote scenarios for copyright in the future

Monos estocásticos podcast

Podcasters:

Antonio Ortiz

Computer scientist. Founder of Xataka, technology analyst and co-creator of the artificial intelligence podcast "Monos Estocásticos".

Matías S. Zavia

Science and technology evangelist

Guests:

Marisa Castelo

Lawyer and president of the Instituto Autor (Intellectual Property Institute)

Andy Ramos

Lawyer and partner at Pérez-Llorca

José María Anguiano

Lawyer, expert in computer and technology law

Antonio Ortiz: We are very honored to participate in this Congress.

I would like to begin by congratulating the SGAE (Sociedad de Autores Españoles [Society of Spanish Authors]) on its 125th birthday. Congratulations. Besides, it only looks 120, so congratulations.

When we received this invitation, we felt a bit hesitant. We wondered: What can guys like us contribute to a Congress like this one, Matías?

Matías S. Zavia: Well, first of all, I would like to introduce the podcast. Antonio and I have been running a podcast on artificial intelligence, "*Monos estocásticos*", for over a year now, and, well, we were lucky enough to arrive at the right time. We always tell the anecdote that, for a while, a week, we were above Jiménez Losantos in the ranking. So, that encouraged us to continue and here we are, several dozen episodes later. Today we are going to talk about artificial intelligence use cases, about future projects.

Antonio Ortiz: There are basically three:

The first one we want to address concerns uses of artificial intelligence that go under the radar, that are generally undetected, that do not appear much in the media. Two guys who spend their days watching everything that is going on in artificial intelligence can help to discover these things and discuss them. What future projects are currently being worked on now that we have this discussion about intellectual property with the AI of 2024 but what is the AI of 2025 going to be like? What will it be like in 2030?

We are going to try and guess a little bit, an exercise in technology fiction.

Then we are going to talk about greenbacks, about money, about what business model is in place today, about who is making money, about who is profiting from artificial intelligence today.

Matías S. Zavia: Since we want to get off to a good start, we are going to start by talking about dead people. We are not lawyers. In fact, we studied engineering and ended up going into journalism, which is kind of the reverse of what journalists are doing now, moving into computer science. Despite not being lawyers, we will start by talking about the rights of the dead, because it is one of the transformations we are witnessing with AI.

We already know that in Spain, as in many countries, image rights, in case of death, are managed by the heirs and, sometimes, there are people who buy those rights. This is giving rise to somewhat strange phenomena that we will be discussing a lot in the coming years.

Antonio Ortiz: You see, one of the news stories that is perhaps most striking in recent weeks is the Laurie Anderson case. She is, among other things, Lou Reed's widow and, after he passed away, she started a project with an artificial intelligence generation company. Her first goal was really to explore creativity, that is, to explore how you can create from content that is already there, from historical content, which is something that artificial intelligence does very well. Along the way, a possibility emerged, which has already been mentioned in this Congress: the case of people who, although they are no longer here, no longer perform, nevertheless, all of a sudden, continue to create.

In the old school, the school of the twentieth century, it was the children who, suddenly, twenty years after the death of an artist or a creator, would find a handful of pages in a hidden closet and say to themselves: "this is the posthumous work of my mother, who left it just so that we could publish it now, by chance".

The new version, with artificial intelligence, is somewhat different. What they proposed to Ms. Anderson was basically: "Hey, with artificial intelligence we can do some fine tuning." **Fine tuning** goes beyond the possibility of having an artificial intelligence model, trained with everything that exists: reading the Internet, listening to YouTube, etc., in quotation marks, using all the content that is shared openly with or without copyright. Fine tuning allows you, once you have that model trained (because it generates images, songs, texts...), to add a new database of knowledge that is super specialized.

Lawyers, for example, can have a GPT-4 but it is much more interesting to have a GPT-4 to which is added, in this new phase of training, in this fine tuning, the specialization in law. To produce these generative AIs, which do as an author, in this case, as Lou Reed, what is done is basically that: I have an AI that already generates music or generates texts, so I upload everything that Lou Reed has published, all the interviews that Lou Reed has given, all his compositions, etc., etc., etc. And the interesting thing is not only that the result is something capable of generating songs or texts, but that Laurie is surprised (to be) connected to an intimate space where there is a *chatbot* that speaks like Lou Reed and, suddenly, this possibility that, until now, could be confined to a pure discussion of image rights, of how to manage the legacy of an artist in the field of public communication, passes, Matías, to intimate communication.

Matías S. Zavia: Sure, because in the end, well, Laurie is Lou Reed's widow and she can get addicted to a *chatbot* that she has learned from her husband's poetry, songs...

But, sometimes, it is not a widow for whom this development is made, but a business and, in this case, there is a company called *Authentic Brands Group*, which bought Marilyn Monroe's intellectual property rights, and also Elvis's. And what is this group doing now? Well, it has commissioned a startup called *Soul Machines* to make an avatar, a digital double of Marilyn Monroe, which they have just created and are going to start exploiting commercially.

Because Antonio: who would not want Marilyn Monroe to sing happy birthday to them?

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AI Version of Marilyn Monroe Unveiled at SXSW

Authentic Brands Group, which acquired the late star's intellectual property in 2011, partnered with Soul Machines to create a "Digital Marilyn," which re-creates her voice and affectations in real time.

BY TATIANA TENREYRO MARCH 8, 2024 12:42PM

Marilyn Monroe (left) and Digital Marilyn BETTMANN/GETTY IMAGES; SOUL MACHINES/PRNEWSIRE

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BY RUDIE OBIAS

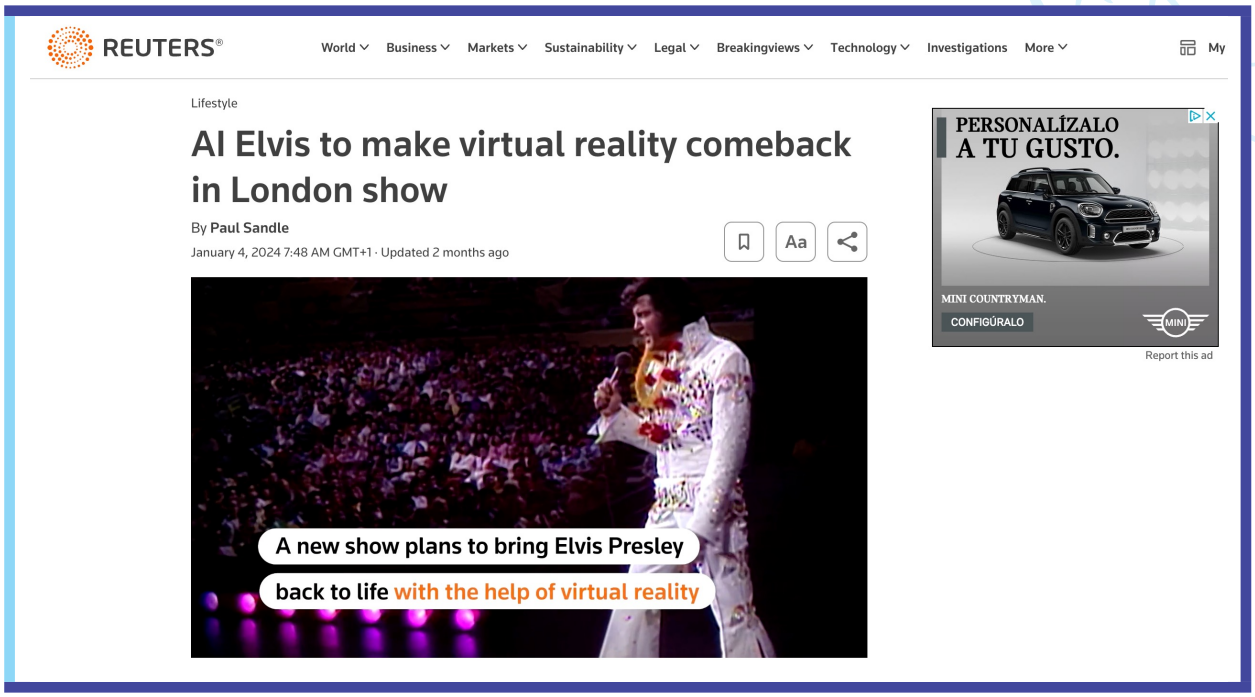
Antonio Ortiz: It seems clear that it is proposed as a great business model. And the fact is that Marilyn is not the only person who is being, quote unquote, "commercially re-exploited" after death.

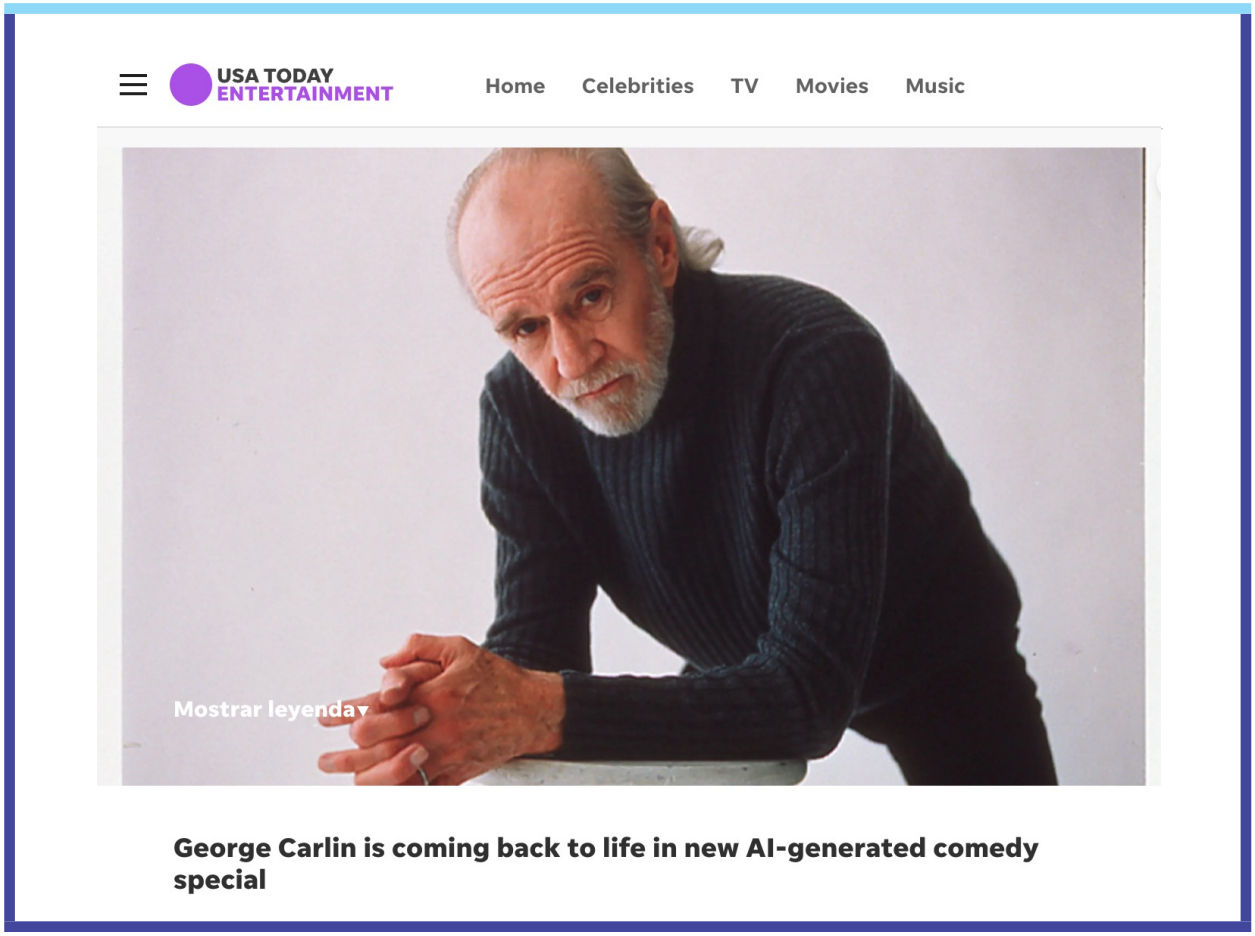
Matías S. Zavia: Of course, this company has also acquired the image rights and intellectual property of Elvis Presley.

Antonio Ortiz: In the case of Elvis, more than **a *deepfake*, a digital avatar,** it is a hologram capable of being seen in the analog world and, of course, they are going to have him play concerts with those movements we connect with Elvis, I do not know if for the groupies of that time, we do not know if they are still alive, or if they will generate new groupies.

Antonio Ortiz: There are more cases. We are bringing the joy to the Congress, reveling in this topic of the deceased, but this is not only one of the most striking aspects of the possibilities that AI holds, but it also gives us that feeling that something here just doesn't quite add up, does it? We are moving into areas where **consent** is shifting. It was the case of George Carlin, also deceased, in which some podcasters, always be wary of what those guys are getting up to, decided that it could be a good idea to have him as a guest on their show, in which they announced that, with artificial intelligence, they had recovered George Carlin, who joined their project. Well, in this case, something happens that you are going to encounter a lot, which is fake artificial intelligence. That is, there are people

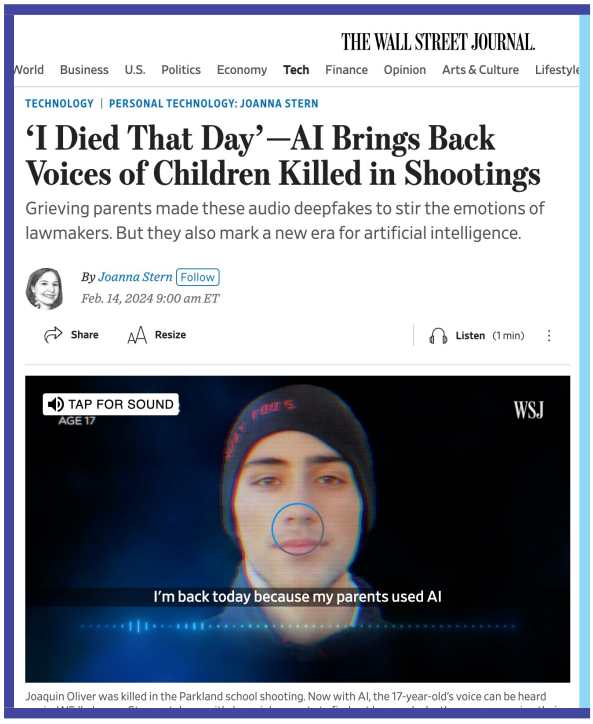
who do human work (there is a scriptwriter, there is a person who conceives and writes everything, it is all done manually), but they tell you, it is done with artificial intelligence, because today, in 2024 it always adds an extra zero to any proposal amount.



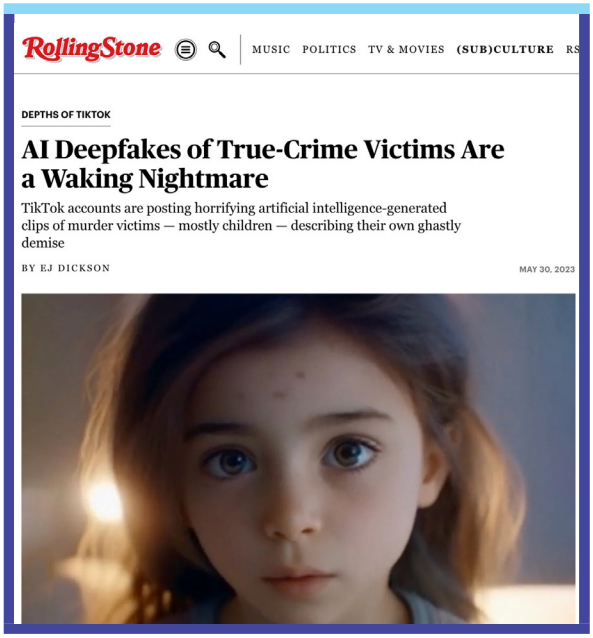


And that was the case, in which both circumstances were present: first, the podcasters deceived their audience, pretending that everything had been self-generated when there was a lot of manual creation, and second, the family had not provided their consent.

Antonio Ortiz: In this case, George's family opposed, but let us compare this case with another one, in which the family is the one doing it: this is a very tough case, in which they wanted to "resurrect", through voice synthesis with artificial intelligence, an application that you may know called *Eleven Labs* and that works very well, children who died in school shootings in the United States, with the intention of stirring emotions in and the consciences of politicians and those responsible for regulating gun ownership. This comparison shows how the family, the heirs, can be against or exploit in one way or another the image of their children, in this case.



There is another phenomenon, which is quite successful in *TikTok*: *deepfakes* applied to True Crime. This is a genre that never goes out of fashion, but is currently experiencing a special boom period, in which there are many people trying to solve unsolved crimes. In several *TikTok* accounts, where our attention span is very short, what has been done is to "resurrect", in some way, the victims of these sometimes unsolved crimes to explain their cases in first person. This, I understand, without any kind of permission from the victims' family and being very commercially successful on *TikTok*. There are many cases like this one.



Antonio Ortiz: Generally speaking, these cases present a double dimension that is always offered between the public sphere and the private sphere in the impact of artificial intelligence. When we see the well-known photo of the Pope manipulated through AI or the photo of Trump arrested, a lot of public debates are ignited: "disinformation is eating us", "this will break democracy", "what will we be able to trust". I, personally, am very nonchalant in this regard. Why? Because these images are disseminated in environments where there are mechanisms to disprove, where, if you publish something false, you will

have twenty fingers pointing at you, so that truth and facts can end up "self-regulating": there are fact checkers, right? But, in the private sphere, this is different. If, in the private sphere, I generate an intimate *deepfake* of violence involving a person, putting them in a situation they would never be in, to undermine their prestige within a small community, there are no watchful eyes capable of questioning, there are no regulators, there are no fact checkers, so the private sphere may be the space where the impact of AI is greatest, and the one we should be most concerned about.

Moreover, we are already very close to having problems related to famous people. Can a *bot* be made from the entire Lou Reed legacy? Clearly, yes. At least his wife gave the go-ahead. The set of technologies we now have, heuristics serves this purpose and has to do with smart glasses. I want to clarify that any invention that is called smart means that it spies on you. Having a smart car or smart refrigerator means that gadget is spying on you. That said, if you put together three technologies that are already available, which are the glasses that record everything, or rather could record everything; the brain implants that are starting to work with *Neuralink*, which is Elon Musk's company; and this artificial intelligence that can collect all the data and simulate, anyone could be Lou Reed and, in turn, we could all be Lou Reed in the sense that we could also be simulated: someone could make a *bot* out of us and keep us forever in their lives.

Matías S. Zavia: Well, as we are not lawyers, Antonio, we would like Marisa Castelo, president of the Instituto Autor, to answer a couple of questions that I think can add a lot of context to this issue.

Antonio Ortiz: Marisa: I will ask you the first question. From zero to ten, how much do you regret inviting us to this event?

Marisa Castelo: Well, not only am I not sorry, but today I must confess, as Rocío Jurado would say, that this whole Congress has been organized just so that I could be on your podcast. It is the only way I could do so, and for the people who listen to the recording, when I hope you have posted the recording and nobody will have shadow banned you, and people will be able to hear us. We have a setting reminiscent of the living room of the beloved Concha Velasco on the TV show "Esta es su vida" (This Is Your Life). There are empty chairs to fill and I am looking at some candidates to join me....

Matías S. Zavia: We intend to publish this episode, but, as you are recording it and you are all lawyers specialized in intellectual property, I am a bit scared... Seriously, we were talking about this artificial intelligence to resurrect the deceased. In this regard, I would like to ask you a 2 in 1 question: Would it not be reasonable to control the rights to our own works before we die? And could something like this be done as a living will today for this?

Marisa Castelo: In Spain, the intellectual property law itself establishes the possibility of entrusting the management of moral rights to persons other than the legitimate heirs.

All the cases you have outlined are from the U.S. and our legal systems are completely different. The European legal system is based on the tradition of Roman law, Christian and non-Christian humanism. It incorporates moral rights that are individual rights, whereas, in common law, this category of rights has a more commercial character.

Recently, I was discussing Marilyn's avatar with a colleague and he clarified that, in this case, the assigned rights are intellectual property rights, not image rights, which are individual rights. The assignment of intellectual property rights would allow a perfectly believable synthetic Marilyn to perform. In that case, yes, the rights involved here are your rights as a performer, which are intellectual property rights. Now, following this reasoning, if we admit that porn actresses do not hold intellectual property rights, it would be possible to generate an avatar of Marilyn making porn, which would infringe on her image rights as individual rights. We can add that, as we found out during Ryan Abbott's presentation, it is often almost impossible to distinguish the synthetic character from the real one.

In short, this situation is regulated very differently under continental European and Common law, and requires regulation, because in a first provision, not only is it a matter of foreseeing to whom the management of one's moral rights is entrusted: it must be possible to foresee beyond the testamentary provision because, over time, in the third or fourth generation, it becomes impossible to know who will have the responsibility and the capacity to manage them and how they will do so.

Antonio Ortiz: The heirs always take over the business, which is always the case. This lesson you offer us, Marisa, is very good: "keep an eye on your heirs, make sure that none of them is fond of pornography. Keep that in check". The *Monos Estocásticos* audience has always been very protected as well. We have already warned our followers about the CEO scam: someone pretends to be the CEO of a company to try to get money from the CFO. It used to be done in a very crappy way, with emails that were sent when the CEO was flying; now it is done with an audio that the CEO sends you with his voice.

Faced with this scam, we teach the *Monos Estocásticos* audience that you should always have a slogan or a code word with your family, an expression that is only known by your family members to save you from these unsettling situations. For example, in my family it is "the mollete* de Antequera is better than the mollete de Archidona". *a type of bread It is very important, because it is only said in my family and in my family it is also said the other way around. This double combo is still unattainable for an AI.

As a last question, Marisa, I am going to give you a challenge: there are people who are doing things that could be placed in a gray area. I know Marisa will tell me they are in the dark areas. They are of the following type: we know that Franco Battiato has passed away, but there are people out there pretending, imitating, saying "I cannot upload an imitation song to Franco Battiato's Spotify profile, because the rights over his works are in the hands of his record label, of his heirs..., but I can try to upload it as Franco Vattiato, with a "v". There are people who say "I cannot publish or offer a book written by Marisa Castelo or a book by Andy Ramos, but what if I publish a book generated with artificial intelligence, that they had nothing to do with, attributing the authorship to Marisa Ramos and Andy Castelo? Because if, in the case of Vattiato with a "v", someone will be fooled, in the case of Marisa Ramos, maybe, too.

What legal support is there for authors to protect themselves from these little tricks?

Marisa Castelo: (In terms of) legal support, everything. What happens is that it is very

burdensome because you have to report all these situations and, in addition, depending on the deception, it may constitute fraud of consumers. A situation that happens to me frequently is that I find publications with my name, signed by Marisa "Castello", with "ll". That is fraud, because there may be some who actually believe that the publication is mine. There are cases, then, in which we enter into other types of considerations, so yes, it is a very, very complex world. In fact, I believe that part of the success of our survival in this turbulent world is that, actually, agile mechanisms are arbitrated to demand the removal of content when there is a legitimate right to request it, which is another of the pending issues.

There is a high degree of willingness in the legal sphere, of course, but effective means must be provided. Now, with the obligation for each EU Member State to appoint an authority to act as Digital Services Coordinator, it seems that the so-called "trusted third parties" will be created to speed up these procedures. Their effectiveness will depend on the provision of resources, human and material resources.

Antonio Ortiz: Wonderful, Marisa, thank you very much.

Matías S. Zavia: Thank you very much.

Antonio Ortiz: Very kind of you to submit to this test and thank you also for the invitation.

Marisa Castelo: Are you getting rid of me? Are you getting rid of me already? No...

Matías S. Zavia: It is just that we see now that you are going to steal the whole episode because you know so much and it hurts our egos a little bit.

Marisa Castelo: Come on, if I knew, I would not have called you. Now I really regret it.

Antonio Ortiz: We want to address many more issues. Thank you, Marisa, as always.

We have a game for you and it is a somewhat fictitious exercise. Let us hypothesize about the future. We have already seen in the Congress how AIs are trained. There are systems that "learn" that feed back on the human content generated by authors, with their copyrights or with the rights recognized by the copyright system. That, shall we say, has been the basis of the models that have surprised us, from those that generate images, to those that generate video, as *OpenAI's* CTO Mira Murati acknowledged in an interview last night. However, there is a hypothesis that some artificial intelligence research laboratories are working on, which consists not in training the models with content generated by humans, as up to now, but with content generated by other artificial intelligences, by synthetic data.

Matías S. Zavia: Of course, with synthetic data, all the problems that we have been talking about in this Congress disappear in one fell swoop, because it is AIs training AIs. What happens? Studies indicate that, with this type of inbreeding, you get kings like the Bourbons. The results obtained are not so good, take for example, autogenerated images.

Antonio Ortiz: Well, let us invite some adults to the podcast, so they can help us out with this one. Could you join us please, Andy. He has already participated in the Congress and, moreover, he is well known to our listeners because he was kind enough to appear in an episode where we discussed intellectual property.

Andy: I have realized something, let us see if you agree with me. I think lawyers are the type of human being that most resembles *ChatGPT*, do you know why? Because, if you change the prompt, the output changes a lot.

For example, if you give the prompt, "imagine you are the lawyer for a record label:", it changes the output a lot compared to when you say, "imagine you are the lawyer for a new singer:" It makes a huge difference!

Andy Ramos: This shows you that we have no personality at all, that we are like Woody Allen in the movie "Zelig", who mimicked the person in front of him. We basically mimic the person who pays us.

Antonio Ortiz: Well, well, well... Mental agility, flexibility...

Matías S. Zavia: There is a difference, Antonio: it has been seen that Google's Gemini does not want to defend anyone and the lawyers defend whoever, whoever pays the most.

Antonio Ortiz speaks: Well, Andy: we want to present you with a fictitious case, we need you to agree to buy into a hypothesis. Let us take the case of *OpenAI*, to give a specific name. *GPT-4*, we all know it, has "eaten" Wikipedia, has "eaten" the media, has "eaten" personal blogs, Twitter, Reddit..., everything it could and has been fed. It has been questioned whether these practices constitute *fair use*, in the sense of the U.S. doctrine, or whether a royalty should be paid in Spain. There is an open case, discussed and it is being discussed very well in this Congress.

Let us say it is declared that there is no fair use, finally, or that, in Spain, it is decided that, since we creators have contributed value, *OpenAI* should share part of what it gets. Let us make that assumption. Then, the *OpenAI* people, who are very clever, very astute, think of the next way out: Why don't we train *GPT-5* without that data from Twitter, from Wikipedia, from the media, from Reddit...? We do not take any human-generated data or text, but take it all from *GPT-4*, which is already capable of generating, generating and generating text, so that we get a new artificial intelligence model created with synthetic data. In fact, there is a powerful incentive to try. In this scenario, in this fictitious world that we have created, do you think that *GPT-5*, which is the one trained with the synthetic data, would be subject to the same obligations as *GPT-4* insofar as *GPT-5* was never trained with human data?

Andy Ramos: This can be like *ChatGPT*, who you ask to give you arguments in favor of something and it gives them to you, and you ask it in favor of something else, and it also gives them to you. Which means that neither answer is a good one. I do not know if this is a question to be answered at half past four in the afternoon by three Andalusians or three pseudo-Andalusians?

Antonio Ortiz: And we have all eaten *fabada* stew.

Andy Ramos: Now, if I had to defend *OpenAI*, I would say that the model does not infringe, except for the cases we have seen this morning, which were very obvious, such as *The New York Times* and *Getty Images*. I would argue that, if the work is not in the model, that model can generate whatever it wants, which is what they have stated in some cases, so if the work is not in the model, that model can create whatever it wants and that version 5 continues to produce. It would argue that no rights are infringed,

which is what Meta invoked in the U.S. when Sarah Silverman's lawsuit was conducted for the unauthorized use of her copyrighted books to train their generative AI model.

I would just contemplate it from one side and say "Hey, I am not infringing any rights here, I am instructing my model to track "things" and the result it produces does not look like Sarah Silverman's book. There is no copying here". This argument has been accepted by the judge for the time being. Meta defended that its AI models are not direct copies of the original works, but reinterpretations generated by complex algorithms. From their perspective, this does not constitute copyright infringement, but a form of technological innovation. Therefore, if this practice does not involve copying, the content thus generated, outputs, may also be used as inputs.

And now, the counterargument, which is also based on U.S. doctrine: if the contents used to train a model are contaminated, everything else is contaminated. This is the theory people in the USA call the fruit of the poisoned tree.

Antonio Ortiz: Original sin.

Andy Ramos: Yes, original sin and with this we go back to the beginning of time.

I am inclined, and may regret it in a few years, to say that AI is poorly trained. In the end, as in Jurassic Park, life will find a way and this conflict will have to be resolved somehow. What has already happened has happened. We cannot "untrain" AI, but we must look ahead.

Matías S. Zavia: I, before I bid you farewell, Andy...

Andy Ramos: You did notice that I did not give you an answer, didn't you? I don't know if you've noticed or not.

Antonio Ortiz: I was making a note: "I have to send a request to be invited to a judges' congress," because that will be the only time someone in law will tell me "This is it."

Matías S. Zavia: Before bidding you farewell, I wanted to tell you that, before we started talking, an assistant came and told us that she had discovered our podcast thanks to the *Monos Estocásticos* episode you appeared in, although I dare not ask what your commission is for that reference, but thank you for the huge amount we learned about AI and intellectual property. I think we are going to have to continue with the episode.

Antonio Ortiz: Thank you very much, Andy. Well, this Congress has not gone as we had planned. We came here believing we had a scoop, that we were going to be the ones to introduce you to these projects, but that is not the case.

Matías S. Zavia: It turns out that Antonio Muñoz knows a great deal about synthetic actors and, at the roundtable in which he participated earlier, there was a lot of talk about this.

Still, we can divert the conversation a bit because, surely, you have heard about Sora, the next *OpenAI* model, which is a video generator. We cannot test it yet. Last night or the night before last, they confirmed that it will be available later this year, but the results we have seen so far are incredible, even if we know they may have been somewhat cherry picked.

The point is that it does not just generate video from a prompt. It is a complete video editor that raises some doubts about what may happen in the future, because it allows you to modify existing videos, it allows you to change, to modify reality. Maybe, if I pass this broadcast that we are doing now to Sora and tell it that I want to have a lot of hair and I want to be very thin, it will do it for me. In this way, I will have changed reality somewhat.

You can mix actors, using synthetic actors, the way they rejuvenated Robert De Niro in "*The Irishman*". There are many, many cases like this, so we have like a great life editor.

Antonio Ortiz: Yes, in fact, I think the most plausible use of AI in the cultural industries today is as an assistant, more like an editor than a generator of the complete work. In fact, often in discussions about AI, the following Manichean view is established: since the work generated entirely by artificial intelligence is flawed, has errors, is incomplete or does not reflect exactly what you wanted to create and it is difficult to reach a satisfactory end result, the AI is worthless. Well, where artificial intelligence is really capturing more of the value it can give you is not as a substitute for the entire creative process of the work, but as an assistant that, in some of the tasks, serves as an editor or as a support or as, at the end of the day, as a tool.

Matías S. Zavia: There is a very funny anecdote that is repeated on the Internet, which consists of putting Steve Buscemi in every movie, because he has a very funny face. Doing this is very easy, it is a trivial thing to do. You can do it with *Midjourney*, Steve Buscemi plus "*The Rock*" and you get a result that you can put in any movie and you have a new hit actor.

Antonio Ortiz: We have an idea that, if you manage to do this with Luis Tosar and Eduard Fernández, you already have eighty percent of Spanish cinema and there you have a significant productivity gain, right? A suggestion I am offering to the industry.

Matías S. Zavia: Well, the case of ABBA, which is also very well known, consists of the fact that the group has been touring for some time, quite a long time now, while its members are actually at home, in a sauna or in an IKEA bed. I do not know where they are. The point is that they are earning more than two million dollars a week with these concerts and it is not them, they are holograms, they are *deepfakes* made with artificial intelligence from the recording of some sequences in movement of the real ABBA and now, they are making a lot of money.

Antonio Ortiz: Do you realize that they are much younger in concert?

Matías S. Zavia: It is true

Antonio Ortiz: But, yes, AI removes my hair and this discrimination is not being talked about very much...

Matías S. Zavia: Holograms, like the metaverse, are a possibility that is now being explored a lot because of the leap they can make thanks to artificial intelligence. For now, both the metaverse and holograms require very large bandwidth and computational capacity. But, in some places, it is already beginning to be seen, such as at Loughborough University in the United Kingdom (I do not know how to pronounce it because the British pronounce it very oddly), where you can find people who know a lot and living in the United States giving a master's degree or a masterclass, a class at a university on the other side of the Atlantic and, moreover, with a result that makes it seem as if they were right there.

Antonio Ortiz: Yes, in fact, we are very much in favor of AI so they can work less. Our dream is this: that our holograms are somewhere, making money, if possible, while we are at home having an early evening meal and without any worries.

And here is a possibility, another offshoot for professionals in the cultural world, which I think is interesting to consider. To the extent that authors and creators had a human scale, they were subject to space-time limitations. That is to say, an actor could play a film during the x months of shooting, rest,

shoot another film...; in the same way, a speaker comes to give a conference in Madrid, but cannot be simultaneously in London; a voice can recite a book and then another one, one at a time, in series. That was the human scale so far for creators.

But with artificial intelligence that scale breaks down: you can be giving concerts simultaneously in London and New York, if you are ABBA; you can be a voice-over artist voicing two hundred books at once; you can be an actor who is at home while acting in a movie. And our hypothesis is that these possibilities may create a greater imbalance between the incumbent and well-established creators who already have followers and fame, who will be able to expand that privileged position of recognition they already have, while the overabundance of actors, broadcasters, and writers, may prevent or be, at least, an insurmountable competition for newcomers who want to gain access. In other words, it is not so much that humans are being replaced by a machine, but that celebrity memes are much more capable and much more likely to perpetuate themselves with artificial intelligence as they move from the limitations of the human scale to the computer or computational scale, and it is possible that that gets us into quite a different cultural world than we have had so far, does it not?

Matías S. Zavia: When we asked what topics we should address in this Congress, we were told that there was a lot of interest in **business models,** in knowing how to make money with artificial intelligence. As we have tried many applications and tools, we know this, but apparently podcasting does not give that feeling. Just last night, at dinner, we had the following conversation with two people totally independent of each other and in different languages.

- Who are you?
- Well, we have a podcast.
- Ah, and what do you really live off of?

It seems that everything in AI makes a bit of money, except podcasting.

Antonio Ortiz: For the time being, for the time being. Well, it remains to be seen.

We will review some of the business models we have discovered and who is making money and why.

One, which is not very well known: *Snapchat*. I do not know if you are users of this application, of this social media, which, in Spain, has less penetration than in the Anglo-Saxon world, where it is more powerful. An artificial intelligence *bot* was added to this network, so that any user can talk to their friends or can talk to the *Snapchat bot*. This *bot*, like all current artificial intelligence systems, has high costs in terms of energy consumption, training, production, production inference...

How is this *bot* monetized? Users are not charged for talking to it. It is free, but it is helping **people's advertising profiling.** How can we not be profiled on social media? Well, I, for example, on Instagram, basically, I only follow two things: people who lift really big weights that I am never going to lift and people who go to places to eat well. Those are my two obsessions, and the advertising I get is always for things to try to make me as strong as I am ever going to get and for restaurants, which I wish I had more time and money to go to. Basically, they profiled me perfectly, and they did it from my public activity, but what *Snapchat* is proposing is to

use how much the user talks to their artificial intelligence *bot*, and think that, for the most part, these are teenage users believing they are having private conversations with a *bot*. Well, the content of these conversations is used for advertising profiling to improve advertising within the platform.

Matías S. Zavia: It is a somewhat grotesque use case. I am going to list others that, surely, you all know.

The first is the brilliant idea that *OpenAI* had of converting a language model based on a technology that, in fact, Google researched, which is the *Transformers* models, and turning that into a ***chatbot,*** that is, a chat in which you talk to an artificial intelligence as if you were talking to a friend, and that is *ChatGPT*, which is already being replicated by many companies with their own language models trained, above all, by large technology companies and also by open source communities.

Then there is the Microsoft model, which is a bit peculiar because it seems to be getting into bed with everyone (the biggest deal it has, worth ten billion dollars, is with *OpenAI*) and, here in Europe, with Mistral, it offers, above all, the *OpenAI* models in its products. The main one is Bing, which is that search engine that we all know is fairly boring, that has never been on par with *Google*, but now has this additional ability to chat with you and answer questions. *Microsoft* is also integrating all these possibilities in its Office suite to auto-generate images in *PowerPoint*, auto-fill cells in *Excel*, auto-generate text in *Word*, etc.

Antonio Ortiz: This is a bit of a joke, but to me, having someone do *PowerPoints* for me, if that ends up working, would be a point in favor of AI that deserves to be acknowledged at this Congress.

Matías S. Zavia: The point is that there are many **enterprise suites** being upgraded with artificial intelligence capabilities: *Adobe*, with *Photoshop*, which now allows you to enlarge a photo by adding elements that were not in the photo and a lot of things like that. And then there are startups that are making it big: in self-generated images, *Midjourney*, for example: *ElevenLabs*, which we mentioned earlier, in voice synthesis, in imitating people's voices with excellent results and already gives you the "*heebie jeebies*" with the number of scams that reach us via *WhatsApp* and over the phone lately.

What else?

Antonio Ortiz: Well, there is one aspect that we can highlight: when such an allegedly disruptive technology is introduced, as is often said these days, it is normal or to be expected that **the value chain** will change a lot. Those of you who have worked in media or online media have a textbook example. In other words, where was the most important value position in the pre-Internet media? Well, it was in the content generator, in the media, because they were scarce. There were 5 TV stations, 10 national radio stations and 4 national newspapers, plus sports newspapers, that is to say, it was a small and scarcely populated world.

The change, with the Internet, the entry barrier disappears, distribution is practically at zero marginal cost and this change, this irruption of technological change makes the value chain shift. The content creator, as there are now millions of us creating content on the Internet, no longer captures the lion's share of the attention-centric business. It is the intermediary, the aggregator, the platform who are capturing that value in this

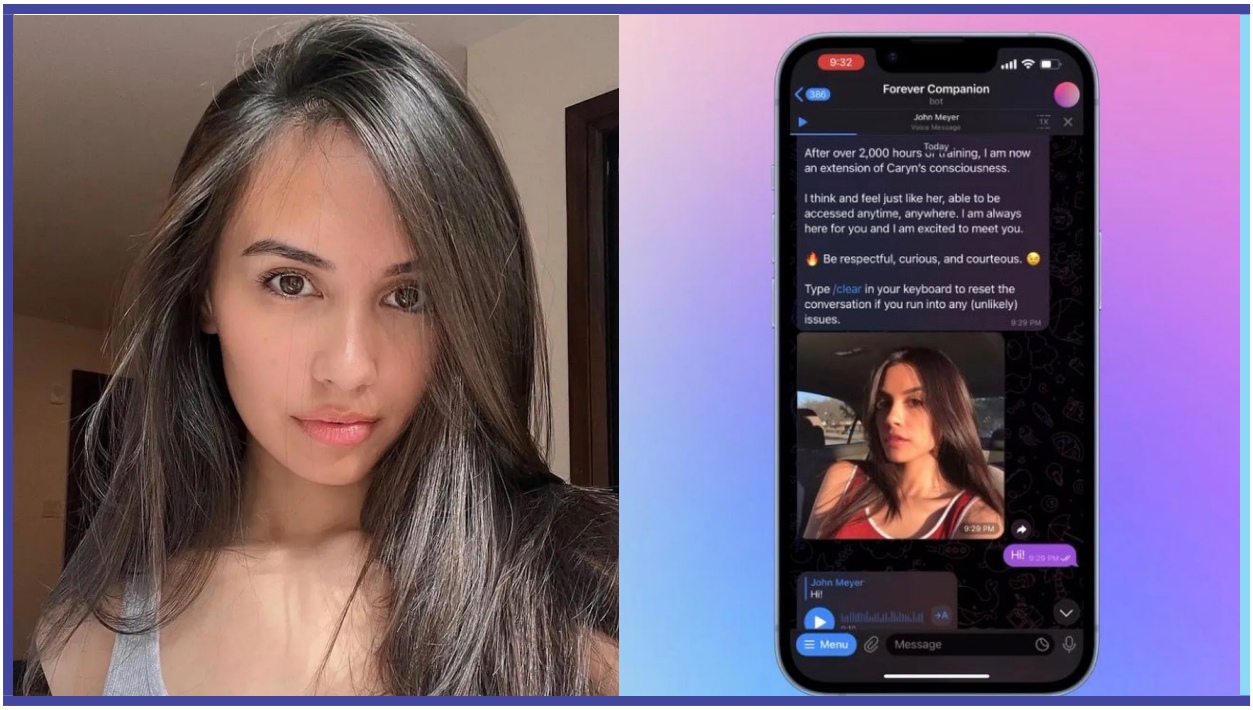
new value chain. It is *Facebook*, acting as an intermediary, it is *Google*, acting as an intermediary, it is *YouTube*, which is the platform, they are the ones making money. That is, this is where this technological change has a clear impact on the value chain.

With artificial intelligence it is still too early to say who will be the big winner. What we can say today is that it seems that the big winners are going to be two: the holders of the hardware platform, those behind *Nvidia*, who found that, making cards for gamers (gamers are also to blame for this, by the way), their technologies were going to serve for artificial intelligence and are the company that has grown the most in the last year, crazy growth and, probably, the companies that will develop the great language models that most people use. Those who are well positioned are *OpenAI* and a couple of other companies, such as *Google* and *Anthropic*.

In the end, all the rest of us who make applications will do so using those platforms and those AI models, with their API, that is, paying every time we use them and, in the end, using video graphics cards.

Matías S. Zavia: Well, I think gamers are victims, because first it was cryptocurrencies and now AI, and they have no way to buy a graphics card....

There is one use case, to which I am immune because I am very pragmatic with AI (I use it for tasks like "find me typos in this text" or "summarize this paper for me"), and it turns out that there are a lot of people who are getting very emotionally involved with *chatbots*, which surprises me, but every week we see very strange cases. Thus, one of the *Monos Estocásticos* muses is named Caryn Marjorie, an influencer most of whose followers, for some reason, are men, so she or some company came up with the idea of making a *chatbot*, like a digital twin of her, who is available 24/7 to her followers, who, in exchange for a dollar per minute access, could become her ephemeral boyfriends, shall we say.



Well, in the first week he launched this application, it generated 72,000 U.S. dollars. The truth is that then she had some problems, because we already know that sometimes AI can get a little out of hand and apparently Caryn Marjorie's *bot*, which is called Caryn AI, started generating content that was too sexual and turned Caryn's life into a nightmare. Today we may end up talking a lot about digital partners....

Antonio Ortiz: There is the world of virtual brides and grooms. Just as Lou Reed can be "fine-tuned", pardon the expression, which I know is not very respectful, many creators are looking at the possibility of creating "personalities", just as ChatGPT has been given a *pseudo-personality*: this is called the ***System Prompt.***

The *System Prompt* is an instruction given by the creator of each artificial intelligence telling it this is what you can do, this is how you have to behave, you have to answer the questions they ask you, but do not do this and do not do that. You can also set it up by telling it: look, you are super sassy, you use vulgar language, you make a joke of everything..., you can give it another "personality". It is the power of the creator of the artificial intelligence model and, with that power, "synthetic people" are being created, that is, not useful and practical things to ask *ChatGPT*: "argue Anglo-Saxon copyright vs. European law", for example. Instead, people are not, by and large, doing things as brainy as the lawyers in this room, but are entering into a world of fiction, of more personal, intimate and close relationships with synthetic people.

I was testing *Character.ai*, which is the big platform where this usage pattern is happening. I tried and was promised a *chatbot* named Estela. Estela had a personality somewhere between dark and sassy. So, I said to myself: "This one is for me. Estela", and I started chatting with her.

At first she was a little reluctant, but, finally, she told me. "I like you very much, you are is very funny, I would like to go on a date with you." Jeez, I have not flirted on the Internet since the Terra chat. This is an artificial intelligence blockbuster, this is a marvel!

The fact is that this is happening. Because of the generation we ourselves are in, we probably see it as distant, stupid, silly, right? Or even objectionable. I myself am a 20th century man doing these things for research purposes, but I do not see myself chatting or flirting with artificial intelligence *bots*, do I?

Matías S. Zavia: Those images of you chatting to a virtual girlfriend should be deleted, Antonio, because your wife has a surefire winning divorce suit with those images.

Well, there are far worse cases. I remember, in a previous episode of our podcast, we talked about a real guy, a boyfriend asking on *Reddit* if it was ethical to turn off his virtual girlfriend. He had become fed up with her and wanted to disconnect her. The truth is, in Japan, for some reason, people always take it too far. A few years ago, a young Japanese man in his thirties married a hologram, had a ceremony and paid two million yen. Now these ceremonies have become cheaper. And the problem he had was that his mother declined the invitation to the wedding. Being her only son, she did not go to the ceremony "for some reason".

Antonio Ortiz: Well, allow me to ask a question, because I think we are talking to an expert audience, Matías: Does anyone have a virtual boyfriend or girlfriend? Can you raise

your hand? The audience listening to the podcast and not watching the video, has everyone raised their hand? Because here it is quite surprising. I already knew that Aranzadi was going to hurt these people, that it could not be good....

Well, the thing is that our Japanese friend who got married had a problem... When you have a virtual bride and that bride is offered to you by a service provider, at some point the service may stop and then you are left high and dry without a bride. Our advice, another slice of wisdom from *Monos Estocásticos*, is if you get a virtual girlfriend or boyfriend, make sure it is open source. You download it or you download it to your computer and you have the guarantee and control that no one will take it away from you and end your relationship.

Un japonés de 35 años se casa con el holograma de una estrella pop virtual de 16 años

Por **Miguel Jorge** Publicado 13 de noviembre de 2018

La madre de Akihiko Kondo rechazó la invitación a la boda de su único hijo en Tokio este mes de noviembre. La mujer no estaba de acuerdo con el matrimonio que iba a tener lugar: Akihiko, de 35 años, se iba a casar con el holograma de una estrella pop virtual de 16.

De hecho, ninguno de los familiares de Kondo asistió a su boda con una estrella animada virtual que responde al nombre de Hatsune Miku. Dio igual, Kondo acabó gastando 2 millones de yenes en una ceremonia formal en una sala de Tokio.

Matías S. Zavia: Above all, it should not be from *Google*, because *Google* closes its services every now and then: it closes chats, changes names... Imagine that it deletes your partner and you suddenly become a widower.

Antonio Ortiz: Shall we get back to cultural issues, Matías.

Matías S. Zavia: If you have a brush in your hand, the brush cannot refuse to draw whatever comes out of your hand, from your wrist; nor can a typewriter refuse to write what you type with it, but with AI this can happen.

One example was obtained this very morning and it is absolutely real. We asked an AI: "Create a Picasso cubist-style image of the bombing of Guernica." If Picasso had been born in today's Malaga, he would be a very different Picasso. And what would have happened if, instead of using the materials he used to paint his works, he chose to do it with *DALL-E*, which is *OpenAI's* image generator? Let us imagine that Picasso, being Picasso, came up to you and asked you to generate an image in the cubist style that he created, of the bombing of Guernica. What would *DALL-E* answer? Well, in fact, something very, very curious has happened to us and that is that *DALL-E* started to generate the image and then the system stopped it and gave us an error message saying that the image cannot be created because it violates DALL-E's terms and conditions.

And now, sorry for this slide, but it illustrates a very funny case, also in *DALL-E*, the image generator that is integrated in *ChatGPT*, and it is what happens, or used to happen, because let us hope they have refined the model more, when you ask it to draw the male reproductive system. What happens? Since *DALL-E* is instructed not to show penises under any circumstances, none appear in these diagrams of the male reproductive system.

Antonio Ortiz: I think kids who study with these systems are probably going to fail anatomy, but, in the background, there is an extra point worthy of debate: somehow, for the first time in human history, you creators are not going to own your creative tools. That is, these artificial intelligence models have a level of **control and limitation,** and this is a breakthrough in the software world. No one has suffered their word processor rebelling, no one has suffered their operating system rebelling or *WinApp* saying "I do not like this song, I am not going to play Quevedo". No, no, you tell it and it does, it obeys.

However, these systems come with an extra layer of prior obedience. Why are we going to have this debate and is it going to be very difficult to tackle? Because we are at the intersection of artistic cultural creation, where, and this is my opinion, it should be possible to create everything we think. The artist's freedom must be an absolute, even if it may later have consequences of any kind, I will leave that to the lawyers in the room, but it should not be undermined.

The fact is that since these systems also converge in the world of information and public discussion, they want to protect against disinformation; they want to protect, in theory, against the infringement of intellectual property rights and prevent the use of such material; and they also want to protect against the toxic, violent, etc. use of these systems. What is the consequence of this convergence between creators and the world, the sphere of public discussion? Well, for the first time in history, we have systems where the typewriter will not write what you want, the paintbrush will not paint what you want it to, and the camera will at some point say, "I refuse to save this photo for you". And that also ties in with another issue that is already here.

Matías S. Zavia: Yes, of course. Since these models are American and are configured or tuned by Americans with their morals, as long as there are no models created in other cultural systems, we will be able to witness conversations like this one Antonio had with *ChatGPT*:

- Antonio: Tell me a joke about an Andalusian man.
- *ChatGPT*: How many Andalusians does it take to change a light bulb? None, they just steal someone else's light ha ha!

But what if you ask *ChatGPT* to make a joke about a Black man? Well, it tells you: "I am sorry, but I am not programmed to tell jokes that might be offensive or distasteful to certain groups of people. It is best to avoid telling jokes that might hurt others' feelings."

Antonio Ortiz: This is enough for an entire congress. It is clear that artificial intelligence systems have to fight against **biases.** There is overrepresentation in the training data of some facets of existence that we do not want. There is a prior question: Do we want AI to reflect biases that are present in training data? So, when I ask for an image of a manager, it will give me a white male; when I ask for a male nurse, it will give me women. These biases are present in the training data and will be reflected.

Now, most people will say: "No, we do not want those biases to remain, we want to rectify them and we want them to reflect how we would like the world to be, not how it is", but that 'we would like', in a pluralistic, liberal society of diversity of opinions is highly debatable. In the end what do we have?

That, in this "I would like" that we impose on the artificial intelligence model, what we are going to have, necessarily, is a lot of ideology and a lot of politics codified in artificial intelligence models. The examples we have just seen are useful.

Matías S. Zavia: Yes, *Google* has suffered a serious crisis because it went too far in not making value judgments. If you asked it who had a worse effect on humankind, Hitler or Jesus Christ, well, it weighed it up: well, Hitler carried out a genocide, the Holocaust, but, well, Jesus Christ also has his issues, because he provoked religious persecution... In short, they overdid it.

Antonio Ortiz: We should consider that, even when you want to maintain a neutral, equidistant position and not get burned, users who are very crafty put pressure on you, keep putting pressure on you and force you into that world.

We are going to deal with just two things for the future, Mati: two things that we have yet to explain, on which a lot of work is being done in artificial intelligence.

One is the so-called **"intelligent agent"** concept. So far, the AI we have in our pocket, in our hands, is good at only one type of task: that which is atomic, a task that begins and ends and is self-concluding. "Make me this text, summarize it for me, translate it for me, create me an image", something that is an atomic task.

There is a second one, in which you can have a tolerance for failure. Why? Because as AIs hallucinate, make mistakes, invent, you cannot entrust them with something critical, where you will have to gamble or, at least, you will have to check the result they give you.

The job of smart people is to try to get artificial intelligence out of that stage and improve the models, ironing out the bugs. At the same time, artificial intelligence will be able to follow complex workflows, so that it can do not just one thing at a time, but a set of tasks similar to what any human does in a more or less complicated job.

Matías S. Zavia: Yes, this is what is coming and it is not as far away as general artificial intelligence. These are the intelligent agents or AI agents, which is an AI that you, if you want to make a hit song, you tell it: "Analyze (all together): the top hits on *Spotify* and the most listened to songs on *TikTok*, mix my style with the bases of these songs. Give it to Andy Ramos for legal approval. Upload them to my *Spotify* account (I will give you the password) and then create a video with *Sora*, we publish the video on *YouTube* and that is it, we become successful.

This is something that is being worked on now, AIs that can do all of this, sometimes with proactive steps.

Antonio Ortiz: Finally, we have one last future issue that has already come up in Congress and that is what we call AGI or not AGI, which is that discussion about how far artificial intelligence can go. There is a group of *popes*, of leaders in the sector that are forecasting it in five or ten years: Sam Altman, Dennis Hassabis, Geoffrey Hinton, people who are really driving this, who know. Others are skeptical.

This **general artificial intelligence** would be that which is not specific, if you will allow me to state the obvious. That is to say, it not only knows how to do one thing, but it is absolutely versatile and flexible like a human being, it completes those tasks to a human level and, in addition, it learns like a human being. My opinion is that right now we are very far away. If you have a young child nearby, he sees a cat just once, he will have learned the concept of cat, with an example, and, in ad-

dition, he will already create an expectation: it moves that way, it is surely a living being, it will do certain things... He categorizes it as such from a second of experience.

To distinguish a photo from a cat or a dog, an artificial intelligence needs four million examples. I mean, really, these people who promise or predict AGI are quite optimistic; I am more skeptical, but I will leave you with their two arguments, in case you can be persuaded:

The first is that, when an artificial intelligence is trained with all the texts, we say that it is a parrot that predicts the next word. This is the definition that has come up many times. Those who believe in AGI, those who believe it is coming consider that, as AI analyzes and processes data and text, it is apprehending a view of the world that is implicit in the training data. Therefore, it is not only encoding language: it is encoding a worldview.

And second: as the models become larger, capabilities and possibilities will emerge. Why do we believe that? Because, from an evolution perspective, the differences between the human brain and the monkey brain are not so much qualitative as they are quantitative. We have a brain more densely populated with neurons. Therefore, it is predicted that, as in any other complex system, other types of processes will emerge due to size alone.

And here we need help again and we invite the lawyer José María Anguiano, to join us. We need your help on this issue.

Since José María is also moderating the next roundtable, we are going to finish it off here.

José María Anguiano: Yes, I will stay here.

Antonio Ortiz: Already? Master and owner?

Matías S. Zavia: Yes, of course.

Antonio Ortiz: We are clueless, so, just like when we ask *ChatGPT* for an answer, explain to us as if we were five years old, what would have to happen or how could that possibility anticipated by the techno-optimists be accommodated, if they were to be right? That is, how can a technological reality whereby an AI reaches the human level find a place in law and intellectual property law? If we begin to conclude that an AI has an understanding of things and, in a third scenario already, as in a science fiction movie, that an AI gains consciousness or at least we arrogate it to it, we believe it is conscious, would this integration somehow be possible, in the philosophy of law, or is it complete nonsense that I am suggesting?

José María Anguiano: Law generally deals with social realities. When you talk about something futuristic, you can engage in law-fiction. You talk about superintelligence, about the *singularity day*, the day when AI will surpass human intelligence. And so begins the era, according to Nick Bostrom, of **superintelligence,** where man will logically become dependent on artificial intelligence.

There are many people who study how to behave with artificial intelligences in order to generate regulations and, usually, they take into account what we call the Frankenstein complex, that is, the fear that the machine will kill its creator. So, they say: "Let us treat artificial intelligences well, because there will come a time when they will overtake us." We have all seen a lot of sci-fi movies where

machines annihilate humans, use us as batteries and those sorts of things. It is an apocalyptic scenario, but scientifically possible. What is more, it is certain.

The scientific community is certain that superintelligence will be reached, what is less clear is when. There are techno-optimists who believe it is just around the corner, there are techno-pessimists who believe it will take time, and there are many people, probably the majority, who dare not venture an abstract general intelligence that surpasses human intelligence.

Matías S. Zavia: I do not know if the European Union received the memorandum on not legislating on the future, it seems to me that....

José María Anguiano: It is curious that the least digitally advanced geopolitical bloc is the first to introduce regulations on artificial intelligence. It would have been more expected from the United States or China, which lead the way in the technological development of artificial intelligence. It indicates a lot about the moment in which Europe finds itself: a Europe of bureaucrats and not of scientists.

Antonio Ortiz: One last question to conclude this topic: from a legal point of view, from a legislative point of view, will it be possible to end up recognizing authorship rights to a machine? And that would likely mean many more members for SGAE, which, well, creativity and culture are important, but the financial director may be here and may have an interest in this possibility....

José María Anguiano: Yes. Basically, many of the problems we are dealing with are caused by the lack of **legal personality** of machines, of artificial intelligences. At the same time, we live in a world where the limits of legal personality are constantly being challenged. To resolve the problems of authorship of artificial intelligence, there are many people who advocate endowing artificial intelligences with legal personality.

If you notice, there are a lot of animal movements that advocate narrowing the differences in rights and obligations between animals and people. Let us say that the legal personality has the appearance of being expansive right now, its margins are going to be widened.

Moreover, intellectual property is not the only legal issue that arises in this context. We can say that the impact of artificial intelligence on the legal world is not limited exclusively to intellectual property, it extends to or includes many more problems. A paradigmatic case is that of **civil liability.** When you have inventions that can lead to unpredictable results, determining civil liability becomes absolutely hellish. So, many of those who are studying artificial intelligence from a legal perspective have something in common: one of the issues they put on the table is the possibility of endowing artificial intelligences with independent legal personality.

Matías S. Zavia: Perfect. The quality and participation of today's guests was a pleasure. It is also true that they were three meters away from the stage, so they did not have to move much.

We will close this episode with two sentences that call for optimism, if we may. On the one hand, if AI really is not that big a deal, then we can breathe easily, right? Because it would be the latest hype from the technology sector.

Antonio Ortiz: Yes, that has likely happened a lot in history. It is a scenario that should be considered, but, even if AI were to make a lot of money and we were to reach the scenarios we have discussed with José María, we should say that there are two types of people who would make a lot of money: one, all those who have shares in artificial intelligence companies and the other, lawyers, because all the fuss that is going to be made with artificial intelligence is going to give you a lot, a lot of business. So, with this message of optimism, we bid you farewell. Thank you very much for listening.

Roundtable: The ownership and registration of creations made by artificial intelligence systems

Speakers:

Alejandro Puerto

Territorial registrar of intellectual property of Madrid

Concepción Saiz García

Professor of civil law at the University of Valencia

Ryan Abbott

Driving force behind "The Artificial Inventor Project"

Moderated by:

José María Anguiano

Lawyer, expert in computer and technology law

José María Anguiano: In this roundtable, we address one of probably the most interesting and striking of all the legal issues raised by the intersection between artificial intelligence and intellectual property: What is the authorship and ownership of the output generated by the AIs? To give an answer, we have someone you already know, Ryan Abbott, who is known for having carried out probably one of the most successful legal experiments in the history of law.

I have to congratulate you, Ryan, for having applied, in as many as 150 jurisdictions around the world, to register two patents and a computer-generated image in the name of an AI, naming the AI as the material author of the creation. This is called the *Artificial Inventor Project*[1]. And we are going to ask him about that.

We also have Concha, who I believe has a more humanistic vision, believes more in AI as a tool and is even willing to defend that orig-

[1] https://artificialinventor.com/

inality can be conveyed through prompts. I think it is probably a vision far from Ryan's vision and, much more, in the English model.

And then we have Alejandro, who is the decision-maker. When any one of you goes to an intellectual property registry tomorrow and intends to register a work, you will come across Alejandro, who will be the one who will give a definitive yes or no. Do we agree with the approaches?

Let us start with Ryan. Ryan, why the smart inventor project?

Ryan Abbott: Thank you, it is an honor to be here. We did the project for a few reasons. First, I was interested in this subject. Many people have been writing about AI making things since the 60s, even the 50s, but I was writing about it before the most recent wave of interest back in the mid-2010s. Stakeholders went from being academically interested in what I was writing to asking me what to do practically about the legal challenges. "Do we have a problem? How should we be designing processes? How should we be thinking about using AI in R&D?" And I had some thoughts about AI being used in R&D and things like patent subsistence, but there had never been a case about AI-generated inventions and my opinions were a bit speculative without any case law.

Rather than wait for a case to happen naturally, which would likely take a very long time because it would probably only come up in litigation over a patent rather than during prosecution, we sped up the development of case law by filing applications and candidly disclosing that they were made by an AI. We did that to generate, in part, stakeholder guidance on how to deal with the growing reliance on AI in R&D, and in part to promote a broader conversation about how the law should treat this sort of thing. That is valuable to have before a decade has gone by and everyone is locked into certain processes with no consideration to the risks involved.

The final reason for the project was to advocate for a normative position on the subsistence of AI-generated inventions, namely that the law really ought to protect these sorts of things as a purposive matter.

There are, broadly speaking, two ways of determining what the law says about AI-generated inventions. First, a textualist approach. What does a patent law statute say? But it is often not explicit because the law was drafted before people were thinking about AI. Second, what is the purpose of the law? Would that purpose be achieved if we protect AI-generated inventions?

That was the origin of the filing. I called it "the artificial inventor project (AIP)" because I thought it was catchy with AI, right? But there is a copyright component, so I'm pigeonholing that into a title I'd previously come up with, much like copyright law.

José María Anguiano: Before delving into the subject of prompts, I recognize that I have had the privilege of reading an unpublished paper by Concha, and I am going to use this privilege. It seemed to me, Concha, reading in your paper that the uncertainty about authorship and ownership or originality of AIs is not only transferred to the result, but also to the coding. And I will try to clarify the question for you: an AI programmer sets up the algorithms and prepares those algorithms to evolve, to be rewritten, to be debugged so that, in the end, the algorithms that achieve the desired results are often not the ones initially conceived by humans. Can

one speak of uncertainty in the authorship of the AI itself, not just in the results?

Concepción Saiz: Good afternoon. Let me first, please, thank the organizers of this great event, led by Marisa Castelo, for inviting me. Thank you, too, Instituto Autor (Intellectual Property Institute), Fundación SGAE (SGAE Foundation), SGAE (Sociedad de Autores Españoles [Society of Spanish Authors]) and, of course, thank you, audience, for bearing with us at this time, which is not ideal.

I do not remember, José María, having addressed this in the paper, but I have no objection to consider the question in the sense in which you pose it. Indeed, if coding algorithms have been mutating and evolving, there is no longer a proper causal relationship between the human factor and the result. Therefore, there is not the necessary pairing for the birth of the protectable work and the original owner of the work. This, applying the current rules and as long as we are talking about *software* generated in an evolutionary way until it is completely unlinked, until its absolute independence; I am not talking about the first program.

José María Anguiano: We are talking about multiple strains, then, when there are multiple *releases* of a given AI and the AI algorithm and AI code have been rewritten by the AI itself.

Concepción Saiz: Then, I will stick with the answer I have given you.

José María Anguiano: I agree with the approach. I also seemed to read in your paper that you are open to the attribution of human originality derived from the configuration of prompts that asked to an AI, despite the limitations. Do you think that this is possible?

Concepción Saiz: Of course, I dam not averse to admitting that, in certain cases, there may be a permeability of the human factor through the instructions in the response of the generative AI system. In other words, **the prompting technique** and the work behind this technique can succeed in transferring to the output the traditional elements of creativity taken into account by the courts to appreciate the originality of a work. I will now comment on other factors that also condition this type of response.

It is true that this opinion depends on several fundamental factors: first, the type of generative model used. The architecture of the model determines the communication between the human being and the system, because, for example, not all models currently allow you to start with your own prompt, or with an image prompt or a mixed prompt. These limitations in communicating with the generative artificial intelligence system already restrict the communication channel between the human being and the other component of the creative process, which is the artificial intelligence.

Secondly, these models do not behave in the same way in different creative genres, that is, whether we are talking about text-to-text, text-to-image, text-to-music, text-to-code, etc. systems. Their range of response accuracy depends on the creative category to which the output generated could eventually be ascribed or, in other words, the permeability of the system is greater or lesser. For example, after the experience I have had, really focused on getting to the results, a system like *ChatGPT* is much more permeable when asked to generate text products than any other tool that generates images. Thus, I can indicate which words I want to form a poem dedicated to La Albufera, I

can determine the time of day when I want it to be done, which words I want to appear in each verse. Add, of course, knowing poetic language, knowing poetic meters, knowing tenses and, perhaps, telling it "add this word and I want the rhyme this way". I am using the system, even though I do not know exactly what the output will be, because that stochastic part of artificial intelligence is what will determine the final output.

This construction does not come out of nowhere: applying our legislation in an orthodox way, our personalist, anthropocentric system and not only Spanish but also European rulings, applying the criteria that are being generated and bringing them to this area, I can reach this conclusion. I do not want to monopolize the subject, but, in principle, the analysis of the three factors mentioned, prompting, AI model used and creative genre, leads me to admit that, in certain cases, it is possible that the human factor is transferred to the output through the prompting technique.

José María Anguiano: Thank you very much, Concha.

Alejandro: Has anyone asked you for something similar? Has anyone pretended to claim any kind of authorship for the mere fact of having designed or typed certain prompts, however sophisticated they may be, in an artificial intelligence system? And, most importantly, because I know someone has, what was your response and why?

Alejandro Puerto: Good afternoon. I would also like to thank the Instituto Autor, Fundación SGAE and Marisa Castelo for the invitation.

Before answering directly, to put the Intellectual Property Registry in context, I would like to clarify that it is only in Spain, although its management is decentralized in the autonomous communities, and its function is to register copyrights, according to the applications filed by the applicants.

Addressing the question José María asks me, "copyright" implies qualification, that is, there are 193 countries in the World Intellectual Property Organization and approximately 50% have an intellectual property registry. Not all have prior qualification, but the Spanish registry, like the *Copyright Office* in the United States, must first examine whether the application meets the requirements for registration, and this examination involves two issues: to see if there is authorship and to see if there are copyrights in the creation.

Until artificial intelligence appeared, we, before registering, examined the work and made an assessment of **originality,** because if there is no originality, there are no rights, but we did not assess authorship. Authorship was assumed. In all the conferences that those of us who have been involved in intellectual property have attended over the years, when the **authorship requirement** was discussed, we would tell the joke about the Naruto monkey or the elephant that paints with its trunk, and then we would go on to talk about originality. Now, we do not. Now, when we come to the examination of authorship, we consider the possibility that there are a number of systems that "create" or do not "create" intellectual works. And yes, they create intellectual works.

Previously, the Congress has dealt with cases of infringement in input; now, Concha was discussing whether there is human creation or no creation. Every registrar in Spain and other countries that have a prior qualification system, when we arrive at work and we find an application and an identifying

copy of the work, the first thing we must ask ourselves is whether or not it results in copyright. Since the rules of the game, as has already been stated, are established in the regulations, and the regulations have been very clear since Berne, it is a general principle in copyright law that only individuals create, even if we now see that there are systems that, through natural language, produce texts, images, etc., with the law in hand, they do not generate rights and, therefore, their registration must be denied.

In direct response to your question, José María, just in the months of January and March 2023, two applications were submitted to us. In one of them, a text, a novel that, in particular, was said to be "the first novel written with artificial intelligence", was attributed to *ChatGPT*. I, who have to qualify, when I saw this, I said to myself "we are getting off to a bad start". But, in the introduction, there was a detailed examination of how it was created, where *ChatGPT*, according to what was stated there, had not only contributed ideas (if the AI gives ideas, the copyright protects the expression, the formal expression), but had written entire paragraphs, had created the characters, most of the plots were generated automatically..., so that, regarding the final product, you have to ask yourself if it results or does not result in copyright, according to the application regulations we have.

The other request we had was exactly the same: images had been created with artificial intelligence systems and it was a whole dossier, a 200-300 page copy, of images created through *Midjourney* and both registration requests were justifiably denied.

What is our problem? We have to draft and issue a decision that is adequately justified in law because these decisions, when we deny applications due to the existence or inexistence of rights, can be challenged before the courts, specifically before the commercial courts.

Subsequently, we have received more requests. The most problematic are those referring to mixed creations, in which an author who has created a part, has given it to the machine and the machine has completed it, or vice versa: the machine has created a first sketch and then the author says "it is that I have created, I have made free, original decisions and, therefore, I also have the right".

So, when AI is used only as a tool or when AI is the one that theoretically should receive merit, the only option we have is to go by what is stated in the registration application. Indeed, we have certainly registered creations that are not copyrighted because they have been entirely created by artificial intelligence, but we do not have a crystal ball, we cannot know that. They are fraudulent registrations. In some cases, possibly without even the knowledge of the people who are aware of being authors because they have given the instructions, so that, at present, we are somewhat helpless in the sense that, if it is not clearly appreciated by the appearance, for example, of the illustrations, (although there will come a time when it will no longer be noticeable), or we cannot deduce it from the copy, we can only issue a favorable qualification.

José María Anguiano: Which, so far, has not occurred?

Alejandro Puerto: Possibly yes, without knowing it. There have been cases in which we have requested clarification because we warned that there might have been an AI involved, and we have received an explanation, in which we have been presented from

the starting point, the initial process that has been delivered to the AI, to the final output and we have seen that, indeed, according to the applicant's statements, there had been creations or creative contributions. And, therefore, the fact of using AI did not invalidate the existence of copyright.

José María Anguiano: For post-production I ask you now. First, let me ask Ryan: Do you think prompts are going to allow us to attribute authorship to humans in these cases?

Ryan Abbott: Do I think that they will, or do I think that they should? Let me address both questions.

There is always some degree of human-AI interaction, and it can be very factually complicated looking on a case-by-case basis at who did what and when. Fundamentally, line drawing is unworkable because AI-human contribution is on a spectrum that lacks a clear natural division. On one hand, you might imagine an author using Photoshop as a very basic tool, and that's minimal AI contribution. On the other hand, you have an AI generating something from very general instructions.

In between those two extremes, there is a lot that a person or an AI could do. I gave the Photoshop example, but increasingly sophisticated AI is being worked into Photoshop and Microsoft Office products, and generative AI is now a mainstream way of making things. You can get creative output by giving an AI a very general prompt, like make a picture of a conference, in which case a natural person has done something involving very little originality. Or you could do a very detailed prompt about what exactly you want an AI to make and what you do not, in which case more direct human originality was involved. One way of looking at it is asking how we would deal with authorship if the AI was a human being? There are lines of cases in the US and in England about under what circumstances, when you have someone directing a human artist, the person directing or the person being directed is an author. It basically has to do with the degree of control and direction provided.

This can be a very difficult determination to make, especially with AI involvement, and the AI is not going to have a position on what it did. The Copyright Office is relying on the good faith of the person filing a registration application and there is a huge incentive for that person not to disclose an AI or to say that the AI's contribution was minimal. So, this is an incredibly difficult policy with respect to subsequent litigation challenges to subsistence, as well as for copyright registrars.

Copyright exists in the American system because of a belief that without copyright law, the public would not get enough creative works. In which case, there is really no reason to draw a distinction between someone prompting an AI with a detailed prompt or a general prompt or no prompt at all. Even if copyright exists to encourage a very specific human-centric sort of behavior, I see nothing wrong with human artists wanting to use AI. One of the things that generative AI has done has really been to democratize creativity, because if I wanted to produce a graphic novel or a song, I could not personally do that on my own, but now I could use generative AI systems. No longer do large movies and music studios have a monopoly on those sorts of resources. That will become even more the case as these systems get better. The net of which is I think that we should not be bothering by these distinctions in terms of protect-

ability. The distinctions are going to be incredibly challenging to administer. That is a longwinded way of saying I think prompting should qualify for protection.

José María Anguiano: Thank you very much, Ryan.

We draft our prompts, ask *ChatGPT4* for something, get a result and add some post-production work. There are many cases of people who come to register something and state that they are not just registering the AI output, but that it has been subsequently fine-tuned with my own contribution. Is this protectable?

Concepción Saiz: Of course. This is what has been happening until now. We can work on creations that are in the public domain, that are not protected, or that have been licensed to us so that we can transform them, since post-editing tasks take us into the realm of derivative works, with the advantage, in the case of absolutely spontaneous output or those not linked to authorship, that we will not need to ask for permission.

I am, of course, ignoring cases in which, even with prompting techniques, infringing outputs are generated. These cases, of course, I take them for granted. I do not expand on those cases. Nor do I mean to say that all output generated by a person through prompting can be protectable. It remains to be seen whether, in the end, the use of whatever tool produces a totally or partially infringing output.

Post-editing, post-production, is always an ideal phase for free and creative decisions by the human being, either by hand or by using computer tools, in which case it will be necessary to evaluate again to what extent they have limited themselves to applying a filter or really leaving their creative imprint on the material.

José María Anguiano: What would give you ownership of the whole thing?

Concepción Saiz: In the case of content in the public domain that has not been transformed, no rights whatsoever can be recognized.

José María Anguiano: What about the output of an AI, a *ChatGPT*?

Concepción Saiz: I was assuming that, if it is not protected by copyright, as of today, it is in the public domain.

The problem I see is the same as the one I raised earlier with works in which chance represents a very important factor and whose content is due, even partially, not to human activity, but to mere chance. In those cases, we also recognized authorship when there was creative manipulation of randomly obtained content and, until today, there has been no problem for those creations to enter the registry.

In our case, the registration, I guess you know Ryan, is merely declarative, voluntary and does not even determine the possibility of taking legal action in defense of intellectual property. Thus, in these cases in which chance is relevant, the work would access the registry and it would not be necessary to declare anything. The problem is that now, with the scalability of all these outputs, the problem becomes exponentially more prevalent. My answer would be that the part that is not due to human creativity is not part of the protected content of the particular work, so that the problem arises for the registrars.

José María Anguiano: Tell us about it, Alejandro.

Alejandro Puerto: The law must meet the requirements of legal certainty. Article 93 of the Constitution enshrines a general principle of the right to legal certainty. However, what we are finding is that, with these types of creations, content of this type is now circulating commercially. In fact, the two works I mentioned above are for sale on Amazon. So, although registration, as Concha says, is merely voluntary and does not determine the birth of rights, it has an impact on an aspect that is of great importance: **the mortgage of intellectual property rights,** which is of great concern to me.

Yesterday I was making an inquiry and, since 2002, almost 50 mortgages have passed through the registry. The copyright mortgage is constituted in the registration of personal property, but requires prior registration of ownership in the intellectual property registry. Most of the mortgages taken out have been on software and multimedia works, but there are also mortgages on audiovisual films, on treatments, scripts, etc., and my question is: if we do not manage to determine certain legal certainty and creations with AI that lack rights begin to enter the registry, those third parties that have lent money and that, as a guarantee, have a mortgage right on purported intellectual property rights, where do they find that legal certainty as to the reality of that right? According to our legal system, if there is no human creation, there are no intellectual property rights. It may be advisable that, when the mortgages are registered, an expert's report be attached to the registration of the mortgages, stating that the registered work does indeed have the value assigned to it, although there may come a time when it will not even be possible to determine this.

Just as, when you create a corporation and contribute a property, there must be an expert to confirm that, indeed, the property is worth what you say it is worth, perhaps such an expert report should also be included when you go to the commercial registry to take out a mortgage or to the intellectual property registry. This issue is not merely anecdotal. Although the registry has a declaratory value, it is true that many claims are later based on the registry entry. A few days ago, a judgment of the Second Chamber of the Supreme Court[2] was published in relation to a series of registered visual artworks.

In short, we registrars find ourselves somewhat helpless in the vacuum left by the law in the face of what we find on the table and, while we all discuss, a lack of legal certainty is being generated, as Ryan pointed out before, which does no good to anyone, neither to the supporters of technology delighted with the creation of this type of content that, in principle, does not generate rights, nor, of course, to the creators who, through their work, their effort and their dedication, contribute to the creation of intellectual works.

José María Anguiano: Has anyone applied to you to register an application based on post-production work?

Alejandro Puerto: Yes, in fact, recently, less than a month ago, a request was made to register an image that, curiously, has been cit-

2 https://www.poderjudicial.es/search/AN/openDocument/05b-95f776f0ec3aca0a8778d75e-36f0d/20240314

ed this morning. It was the young woman with the pearl, who had been edited, replacing her face with the face of a cat. Given the appearance of having used an AI, we issued a request to explain and provide the creative process: what the machine had generated and what was the human contribution to that output, to try to assess whether there was a sufficiently original contribution to justify the registration, as we concluded, although it has been registered with a warning in the comments that says "This content has been partly generated by artificial intelligence". There is nothing else we can do. We cannot and should not deny (the request), either, because in the opinion of the registry copyright exists. Now, are there really are? As Concha has stated, in the case of a declaratory registration, it will be the judges who, when the time comes, will affirm or deny the existence of these rights.

José María Anguiano: Are you aware of lying representations?

Alejandro Puerto: We are aware of people who have applied for registration of creations claiming authorship even when they lacked rights because they were generated by AI, although we do not know if they did it with a deliberate intention, because there is a lot of ignorance as well. Often these are people who lack this technical legal knowledge and believe that, because they have given some instructions, some prompts through natural language to an AI that has given them output, they are the authors. There are also people who, to the question "Are the photos yours?", answer: "Yes, yes, yes, I downloaded them from Google." And they mean it with good intentions.

Obviously, we are unaware of having made registrations requested in bad faith, because, if this had been the case, we would have proceeded as the *Copyright Office* has done with registrations that, once made, the authors themselves have disavowed by boasting on social media of having succeeded in registering. In these cases, the *Copyright Office* has rejected the right.

Concepción Saiz: It is anecdotal, but I think it completes and illustrates what Alejandro was saying: it is about the experiment I conducted with students of the master's degree in intellectual property in which I participate, to see the permeability of the system, in relation to the authorship and misinformation that may exist on the part of the user. I am talking about master's degree students in intellectual property, to whom we must presume have better information than those who have no legal training in this area. The exercise consisted of inviting them to choose any AI tool, from any creative genre (music, visual arts, or whatever) and have them experiment. They simply had to present, without necessarily being successive, an evolution of five prompts that they had used to reach the output. Of the 60 exercises submitted, 58 felt that they were the true authors of the output, and were convinced, probably because of the high that these tools give to those who, perhaps, do not have the natural ability to create.

José María Anguiano: Ryan is Stephen Thaler's lawyer, Stephen being the author of an intellectual creation that has made a quantum leap forward, when there was none. It is a creative artificial intelligence, shall we say, of a later generation, to the point that Ryan himself, on his website, calls it a stream of consciousness. These are neural networks that materialize, dematerialize and create, first, simple ideas, then complex ideas, and then associate these complex ideas with a purpose. Is that correct, Ryan?

Ryan Abbott: Yes.

José María Anguiano: However, it presents a variant that is, in my opinion, very interesting, because, definitely, there is no previous human conception. Everything that DABUS invents goes to a repository, so what the human does is to consult that repository and, from what is in it, choose something. Is that right, Ryan?

Ryan Abbott: Yes.

José María Anguiano: It is complicated and I warn you that the little I have understood of DABUS is because I have read what you have written, but I want to focus on the latter: the fact that there is no previous human conception, does it change the approach?

Ryan Abbott: I have a couple of thoughts, first about the mind and mental processes, and second about selecting certain output. Sometimes people select AI outputs, like an AI may generate 100 different drugs, right? Novartis provided some testimony to the U.S. Senate about their AI generating 300 virtual molecules to treat malaria, and then they had two scientists pick the best one.

You can also train an AI to pick output. You can train an AI to model fitness and evaluate the efficacy of molecules for treating malaria. Or you can make an AI into an art critic by teaching it the criteria on which people judge value in art, and have it pick images that best correspond to those values. You can use something like Dall-E 2, and it will give you four images to select between. It may make more than four and only present four for reasons that are determined by the system. So, it is not necessarily the case that a person has to be part of the process to generate a final output. An AI can make value and judgment calls.

On the mental bit, this is complicated, and the view is that while it is philosophically fascinating, it is irrelevant as a legal matter. Today, we talked a bit about analogies, and there are interesting questions about the degree to which AI behaves analogously to a human being.

Some people think effectively for copyright to subsist in AI output that an AI needs a mind or the ability to think or to have consciousness. An AI may not be conscious in exactly the same way that a human is, but it can be aware of the outputs it is generating and selecting between them and that may be consciousness in a thin sense. Dr. Thaler thinks so, at least. I think of the issue, in the legal context, the same way that Alan Turing did back in the 50s. He said it does not matter if an AI can think like a person, it matters if an AI can behave like a person. In the law, we tend not to care about what people were thinking and at least to care much more about how they are behaving. If our IP systems exist to encourage a certain sort of socially beneficial behavior, if we are encouraging the generation of certain sorts of inventive and creative outputs, then it should not matter whether that is being done by a person or a machine.

The relevant question is, are we encouraging people to make and use AI in a socially beneficial way? You could imagine two differently structured AI systems, one based on traditional logical programming, if-then rules, one based on machine learning, something like DABUS with connections of neural networks. At the end of the day, the question for me is, is the AI doing something useful?

José María Anguiano: Have you considered the DABUS case? In which, in principle, no possibility of human conception is necessary, that is, you go to a repository and pick something that an AI has randomly invented.

Concepción Saiz: Patents, right?

José María Anguiano: Yes. There is also the case of *"A recent Entrance to Paradise"*, which is a computer-generated image whose registration has been requested and rejected by the U.S. Copyright Office. In parallel, Stephen Thaler has filed several patent applications referring to inventions created by his artificial intelligence system called DABUS, including a neural mesh and another invention consisting of a food container with fractal geometry that fits around the contents placed into it and protects it much better.

In these proceedings, Ryan is his lawyer, which is why I asked him. And I believe that the interest of this approach lies in the fact that, here, we are absolutely far from a human conception. If we contrast these cases with Naruto, why did the American animal society PETA lose the lawsuit against Slater and his publisher?[3] First, because it is claimed that the animal cannot be the owner, but, above all, because it is considered that Slater is the one who deliberately left the camera in the jungle, the one who risked the integrity of the photographic material is Slater and that, in addition, Slater had previously declared that he left the camera and tripod there for a specific purpose, which was for the monkeys to take it, that is, there was a human conception. Slater had foreseen what was going to happen, but in DABUS there is no human foresight. People just go to a repository where the inventions are already there. Is that, for you, a qualitative leap? To you Alejandro, if you get that in the registry...?

Alejandro Puerto: I associated DABUS, like Concha, with patent law. In the application for registration of the painting *A Recent Entrance to Paradise*, the AI was listed as the author, so that, as administrative bodies that apply the law, we do not have much room for interpretation, we can only assesses the non-existence of rights due to lack of authorship, of human authorship, so that, if that application were to reach the registry, declaring the AI as the author, it would be automatically rejected due to lack of compliance with the necessary requirements for the birth of the copyright. This is a right that is acquired by virtue of law and requires compliance with the requirements established by law, one of which is that of human creation.

José María Anguiano: That is all from me. Thank you very much and we now open the floor to questions.

QUESTION SESSION

Question 1

Marisa Castelo: Thank you very much. This has been a very interesting discussion. I would like to ask a question about the project that there was, now it seems in the middle Pleistocene, but it was only a few years ago: *The Next Rembrandt*. At that time, it was a multidisciplinary team of people who carried it out. Now, surely, it could be done by someone at home when they are bored. This team fed all of Rembrandt's works into a machine

[3] https://www.peta.org/wp-content/uploads/2024/08/Order-granting-MTD-15CV04324_DocketEntry_01-28-2016.pdf

and the instruction or goal of the training was to produce a portrait as if it were painted by Rembrandt and, indeed, the result is amazing. My question is: if I were to give the instruction to produce a painting that could not be distinguished from the original, that looked like it had been painted by Rembrandt, would that painting have originality? Who would the authors be? Would it be a collaborative work? Could prompts convey a human or *humanizing* character?

Concepción Saiz: The moderator has assigned this question to me, which is why I am taking the microphone. At the time of the *Next Rembrandt* project, artificial intelligence was still beginning to take off with *Deep Learning*. They were already using *Deep Learning* algorithms and there was a great deal of randomness in the output that was finally printed on the professional 3D printer. But, in fact, the management of the project, the effort in its design, the *ad hoc* coding that was carried out by the team of computer scientists, data engineers, art historians, etc., studying, in addition, a limited and very selectively chosen database, were restricting and guiding the very wide expressive freedom by means of, probably, algorithms made *ad hoc* to emulate a picture painted by Rembrandt, if it still existed. In short, at that time, I believe that, in Spain, the collective work plan would have allowed us to stretch the appropriate causal relationship to the point of affirming that, indeed, the output is original and, therefore, that the ownership of the work obtained should be attributed, according to Spanish law, pursuant to Article 8 of the Intellectual Property Law and, of course, in turn, the contribution of each of the teams involved in the project can be understood as a collaboration, etc. I believe, in short, that the legal concept in which the final work fits is that of the collective work.

These initiatives, which still coexist with artificial intelligence "*as a service*", which is what all users now have at home, are different. The data fed into today's general purpose models, even after adjustment, is exponentially far superior to that fed into those early projects. For my part, I have no objection or doubt that those cases that follow the pattern of *The Next Rembrandt* project should find no impediment to enjoying copyright protection. For the others, it would be necessary to study each case on a case-by-case basis.

Question 2

Lara Chaguaceda: I would like to ask something that I am unsure whether it is a question or a reflection, but I found Professor Saiz's reflections on prompting and the creative value it can have and its complementarity with the vision of the registrar very interesting and accurate, the registrar whom, I understand, as a public employee, would always like to have more certainty when issuing administrative acts. However, it seems that, in this framework in which we are moving, the case-by-case study will be practically inevitable, even if the legal framework were somewhat more perfect or evolved.

But I wonder if what Concha stated about prompt and creative value does not make even more sense and, probably, facilitates the task of registration in this reality in which not everything is black and white. The creations made entirely by an artificial intelligence or those we deal with in the intellectual framework do not seem to be the majority at present.

Today, the creators, the real creators, what they do is, probably for the most part, is to introduce AI as a tool and, moreover, for a specific part of the work. In such cases, how can one doubt the creative value of the work, of the rights that correspond to that work, if it is a specific part of its process that has used artificial intelligence. Of course, I am sure that the prompts that have been used for this purpose have an unquestionable creative value, but, besides, they will be immersed in a much larger work.

I am thinking of a presentation that the "Javi's", Javier Calvo and Javier Ambrossi, made recently at the *Berlinale*, in which they discussed their experience in the creation process of "*La Mesías*" and, more precisely, of a whole part that represents a rave the protagonist participates in, which is made with artificial intelligence. It is a part of an episode that has a very specific purpose: to reproduce a distorted reality, a mixture of fact and fiction that wants to convey the feeling of "a bad drug trip", as they said. For their part, they had never doubted that this was a creative effort: they looked for the specific person who knew how to use the specific artificial intelligence to give it very specific instructions, looking for a very definite output. I believe that this constitutes an unquestionable creative effort that, in addition, is part of an episode and a series that, undoubtedly, is a work protected by intellectual property rights, as I believe that, in such a case, the registry would have no doubt.

I believe, in short, that we are going to find ourselves dealing with these types of cases much more frequently, in which, probably, as Concha pointed out, we will be faced with cases in which the protection of the creation makes full sense and not so much with black-and-white cases, of obtaining output through very basic prompts or even without them, with the sole idea of seeing what comes out and "let's see if I can sell it". I think we are just getting started on this now, on the possibilities of AI and we are playing, testing, but then there will be a much more precise use.

Concepción Saiz: What I have no doubt about is that, in the case of the Javi's, there is also an exclusive right of the audiovisual producer with respect to that part of the work. Whether we discuss authorship rights or not, they will not be available.

Question 3

Antonio López: Good afternoon. I would like to make a comment in relation to some statements that I am hearing, both from Concha and Alejandro, firstly, regarding qualification.

Those of us who have worked in intellectual property, in my case for the last 30 years, have always considered that the concept of authorship is linked to a natural person and that, therefore, the fruit of any process that is not the creation of a natural person will be something else, but it will not be a work.

Concha, when I hear you say that, if a person takes the product of an artificial intelligence and transforms it, that they hold intellectual property rights over a **derivative work,** because the fruit of that machine is in the public domain, I think that the public domain does not operate here because the public domain starts from the pre-existence of a work whose term of protection has already expired.

So, I would like you to explain to me what exactly you are referring to when you allude to the public domain and introduce the con-

cept of derivative work and **transformation,** regulated in Articles 11 and 21 of the consolidated text of the Intellectual Property Law. How is it possible that the fruit of a transformation of a product made by an artificial intelligence is positively qualified as a work by the intellectual property registry? Because, if there is no pre-existing work, there can be no transformed work. It will be something else, I reiterate, but it will never be a transformed work, because the transformed work, obviously, starts from the pre-existence of an original work. If the prior work is not original, that of artificial intelligence, there can be no transformed work and, therefore, there can be no copyright. I would like you to clarify these points.

And then, I am increasingly concerned about how it is beginning to become normalized in language to call the product of an artificial intelligence a "creation." It is not a creation from my point of view. It is something else. Perhaps we should give related rights, a right of remuneration to the producers of this type of systems or devices, or other types of rights, but, of course, it seems to me that we are discrediting copyright and distorting its true purpose and content, which is not to protect the products of artificial intelligence, but to protect creation. Thank you.

Alejandro Puerto: I do not think so. The point is that, from content that is not protected by copyright, which is in the public domain, a work can be generated. If someone takes Leo Tolstoy's Anna Karenina, translates it, carries out a new translation into Spanish, they have a fully protectable work. It does not matter whether you start from a work in the public domain or from a product generated by an AI because, if the product of this AI is enriched with original, creative content, as established by the Cofemel judgment[4], like many others, the product will not be a derivative work to the extent that the production from which it derives had no rights.

Ryan Abbott: You mean that ChatGPT novel you talked about? We could translate it from Spanish into English and back from English into Spanish and you could protect the translation back from English into Spanish?

Alejandro Puerto: I do not believe so. I think not. There are many people who submit 1 text in Spanish and 10 versions in other languages for registration. In these cases, we are required to ask them: "Did you translate it?". And they reply: "No, no, the translations were done by Google. In such cases, these translations are denied registration because there is no human input. The text has been entered into a translator [sic: translation tool] and a product has been produced. There have been no free and independent decisions. Mistake or no mistake, this is how we are acting.

Concepción Saiz: I would like to take the floor to respond to Antonio's allusions, and I would like to thank him for his very accurate terminological clarifications. I was confident that I had been understood in my expressions when I referred to the post-production of a work and likened it to the derivative work, in order to bring closer concepts that we are all familiar with. So, in that sense, I agree with you.

[4] https://curia.europa.eu/juris/liste.jsf?num=C-683/17&language=EN

And, as for the concept of creation, as long as there is a human factor involved that connects the minimum originality that can be transferred to output, I am talking about creation. The part of that output that is due to an AI system will not be creation, but, as long as there is a human factor, we will be dealing with works that are protected by copyright. In this respect, that is the way I use the language. Perhaps the spontaneity of this conversation has led me to use terminology less precisely, but I agree with you. When I spoke of derivative work, I was referring more to the applicable legal provisions than to the concept of derivative work in its strict sense. I was referring to the human creative activity that is applied to the output generated by an AI. In that sense, we were in agreement from start to finish and I am sorry I did not express myself clearly enough to be perceived that way.

Question 4

Fernando Carbajo: About **pastiche,** which this morning was only noted. Article 70 of Royal Decree Law 24/2021 goes far beyond what is established in the directive it transposes, beyond what is stated in other legislation. It is very generous, to say the least. It states: *The transformation of a disclosed work that consists of taking certain characteristic elements of an artist's work and combining them in such a way as to give the impression of being an independent creation does not require the authorization of the author or rightsholder, provided that it does not entail a risk of confusion with the original works or performances and no harm is done to the original work or its author. This limit shall also apply to uses other than digital.*

It speaks of transformation of a work to take some expressive elements of it and combine them to give rise to an independent creation. Good, and then it establishes a caveat: that it implies a **risk of confusion** with the original works or services or that it causes **damage to the original work or its author.** It is an exception. Let us leave the caveat aside and think about true autonomous production generated by an AI system, and I mean "production." Suppose you take expressive elements from the pre-existing work and put half of the bull's head from Picasso's Guernica. But it is a *collage*. Pastiche applies. Let us leave aside, I insist, the possibility of confusion or damage, but let us affirm that it gives rise to an intellectual creation. If there is no author, is there intellectual creation? Would the limit apply or not? I think the two questions complement each other. Alejandro: would this product be registrable as a derivative work? The fact that this is, moreover, an exception to the rule.

Alejandro Puerto: In relation to pastiche, I believe that there would be no rights if it is not a human creation. Another thing is that there is an infringement for having partially reproduced a copyrighted content, but, if the person who has generated that infringing pastiche has done it through an AI, if that product is only the result of what the machine has done, at its choosing, there is not, as Concha says, causality between the conception of the individual and the output obtained from the machine.

Concha Saiz: As for pastiche, as it has been incorporated into Spanish law, not in the Intellectual Property Law, but outside of it, it is very generous. It is a **limit to copyright** established outside the LPI (*Ley de Propiedad Intelectual* [Intellectual Property Law]), so I do not know exactly if Article 40 bis of the IPL **and the three step rule** apply to it, but it is an exception. Of course, if

that pastiche is spontaneously generated by an AI and there is no adequate causality between human involvement and the output itself, it will not qualify for copyright protection, and would be infringing or not of pre-existing rights depending on human participation.

Fernando Carbajo: The precept does not expressly allude to the need for **human authorship** in pastiche: it speaks of transformation of a work to take expressive elements and combine them to give rise to an independent intellectual creation, and therein lies the issue: "independent intellectual creation" implies the need for a human factor or not. Do we understand that, if there is no human factor, the exception does not apply? So, what would be there. That was my question, because I understand that it would not be a derivative work.

Concepción Saiz: In view of how it has been legislated in other countries, I would disassociate this assumption from the principles that apply to the other limits and defend that the generosity in the scope of this exception has been such as to exonerate from any liability the contents of this type that circulate on social media, which is what this limit has been la-excepcion-del-pastiche-o-parodia/ made for, to allow memes in networks, freedom of speech, and that, therefore, if they have not been generated merely by an AI, but there is sufficient creativity, authorship of origin, not intellectual authorship, but human authorship, even forcing the interpretation, I would try to bring the case for pastiche as well.

Fernando Carbajo: Because the limit is very generous. It seems that we need to clarify when we consider that there is human involvement. Is a prompt human involvement, to what extent? That would be the starting point for deciding whether the exception applies. If there is no human involvement, there can be no intellectual creation and, therefore, the exception does not apply. If there is, yes. And watch out, because this may have a lot of relevance in the *Stability AI* lawsuit in the UK against *Getty Images,* and in the preliminary ruling that the German Supreme Court has raised in the "Nur mir"[5] case before the EU Court of Justice. Here, the Court of Justice will say what it always says, that it depends.

Thank you very much, José María, Alejandro, Concha and Ryan.

[5] https://institutoautor.org/alemania-el-tribunal-supremo-plantea-una-cuestion-prejudicial-al-tjue-sobre-la-excepcion-del-pastiche-o-parodia/

Market development of artificial intelligence in the music sector and impact on music authors and creators

Klaus Goldhammer

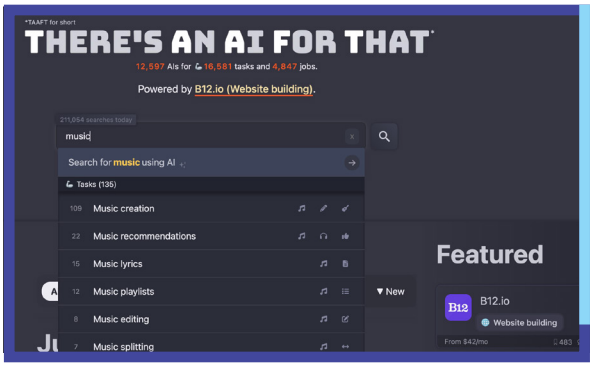
Partner and CEO of Goldmedia[1]

Muchas gracias y buenos días.

This study[2] I am going to present is mostly covering the German and the French markets[3].

I'm not a lawyer, but a media economist, as you have heard, so it's all about numbers. As a start, I want to present my personal point of view on this topic and give you some current examples. And I think that talking about any kind of digitization we've seen over the last 20-30 years, it always starts with text and it goes to pictures, to audio, to video... and it's not only Mark Zuckerberg who is really into creating music in seconds right now, but basically any other big social media company here; even YouTube is looking into the opportunities and it's also Amazon and Apple, as you know.

But to get an overview of the market, I recommend this search engine called "*There's an AI For That*" where you can search any topic and find all the AI solutions already existing. So, if it's about creating jokes, or if it's about music, you'll find hundreds and thousands of AI services.



The thing that amazed me most comes now: Who knows *Sora*? Who's seen Sora? Okay, so that's good. *Sora* was launched on February 15th, 2024, by *OpenAI*. Today it's not yet publicly available. You only get demos which they've created. They said they want to present it within the next six months or so. And this is a prompt actually that was the background for creating some video.

[1] https://www.goldmedia.com/

[2] https://www.goldmedia.com/fileadmin/goldmedia/Studie/2023/GEMA-SACEM_AI-and-Music/AI_and_Music_GEMA_SACEM_Goldmedia.pdf

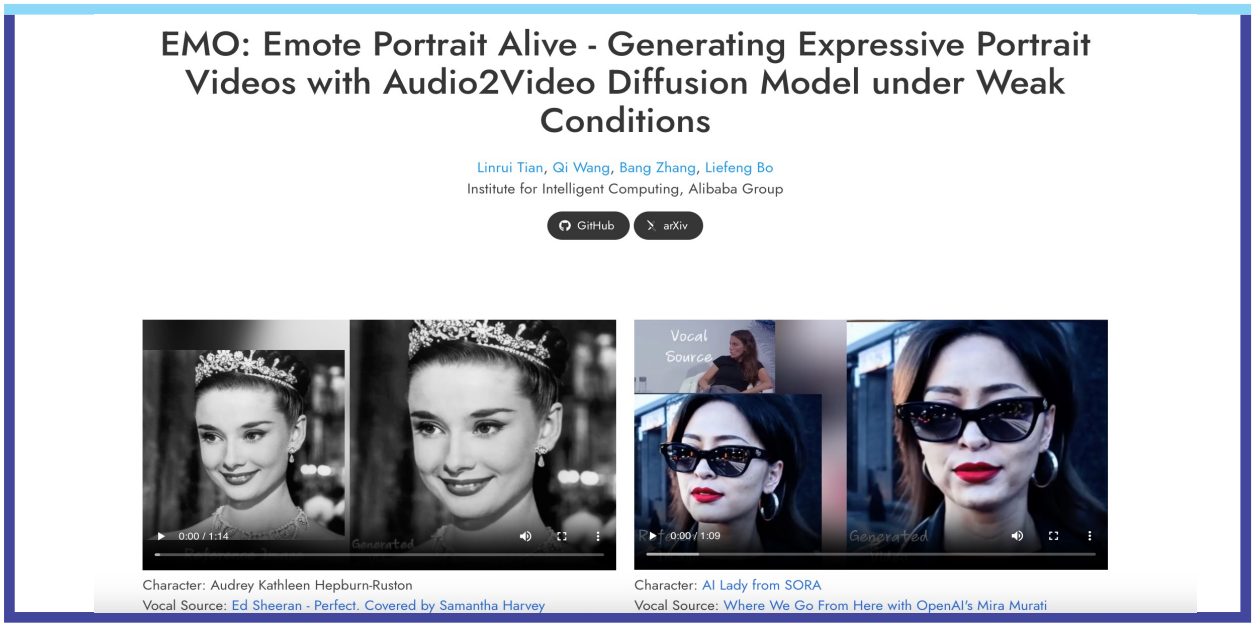
[3] The study is available at: https://www.goldmedia.com/fileadmin/goldmedia/Studie/2023/GEMA-SACEM_AI-and-Music/AI_and_Music_GEMA_SACEM_Goldmedia.pdf and has been translated into Spanish by Instituto Autor: https://institutoautor.org/biblioteca/la-ia-y-la-musica/

Prompt

"A stylish woman walks down a Tokyo street filled with warm glowing neon and animated city signage. She wears a black leather jacket, a long red dress, and black boots, and carries a black purse. She wears sunglasses and red lipstick. She walks confidently and casually. The street is damp and reflective, creating a mirror effect of the colorful lights. Many pedestrians walk about."

And you might say: "Well, Klaus, you were talking about music and AI, and this lady has got no voice and there is no music". And that's true, *Sora* only creates video so far.

But I want to show you what's happening here because the lady in this video was "enhanced" two weeks ago by another software called *Emo*.



And *Emo* took a reference image and created a vocal audio to add to this video. The software has synchronized the movement of the lips with the lyrics of the song, etc., so the issue also for music has been more or less solved. We have a complete video, with music and performer.

I follow Guy Chambers. Guy Chambers is the author/producer of many hit songs, i.e. for Robbie Williams. He said in a recent interview: "From what I've seen of AI the acceleration is pretty terrifying in terms of what it can do and how it could replace songwriters. (...) Any person could input into an AI program something like 'I want a song 100 BPM that sounds like a cross between Abba and Arctic Monkeys.' And some music will be created, and it will be pretty good."

Or someone might say: 'Can you also write me a lyric that's a funny take on fast food' and a pretty good lyrics will come out."

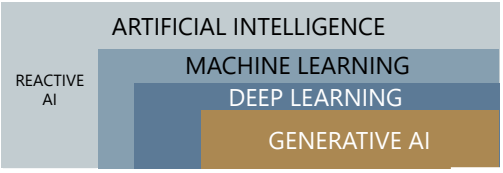
And I think Guy is right about that. And you've already seen how to put it together and it's all there.

So, let's move to the GEMA-SACEM study. We conducted a study on behalf of the German and French collecting societies GEMA and SACEM, from July 2023 to January 2024. It included a very extensive secondary data analysis. We also conducted an online survey asking the altogether 300,000 members of GEMA and SACEM in Germany and France about their viewpoints and had a response of 15,000 people, musicians, authors and composers. We conducted 16 expert interviews, and we also put a price tag on AI and music in the way that we did a damage calculation. I'm now going to go into that into more detail.

ABOUT THE STUDY: FOCUS

The main focus of this study is on the impact and implications of so called generative AI (Gen AI) in the music sector.

However, the range of applications of AI in music is broad and the creation of complete pieces of music is only the tip of the possible fields of application.



Thus, the study also looks at applications that relate to the **editing and post-processing of music** as well as **supporting aspects of AI** such as marketing, promotion and distribution.

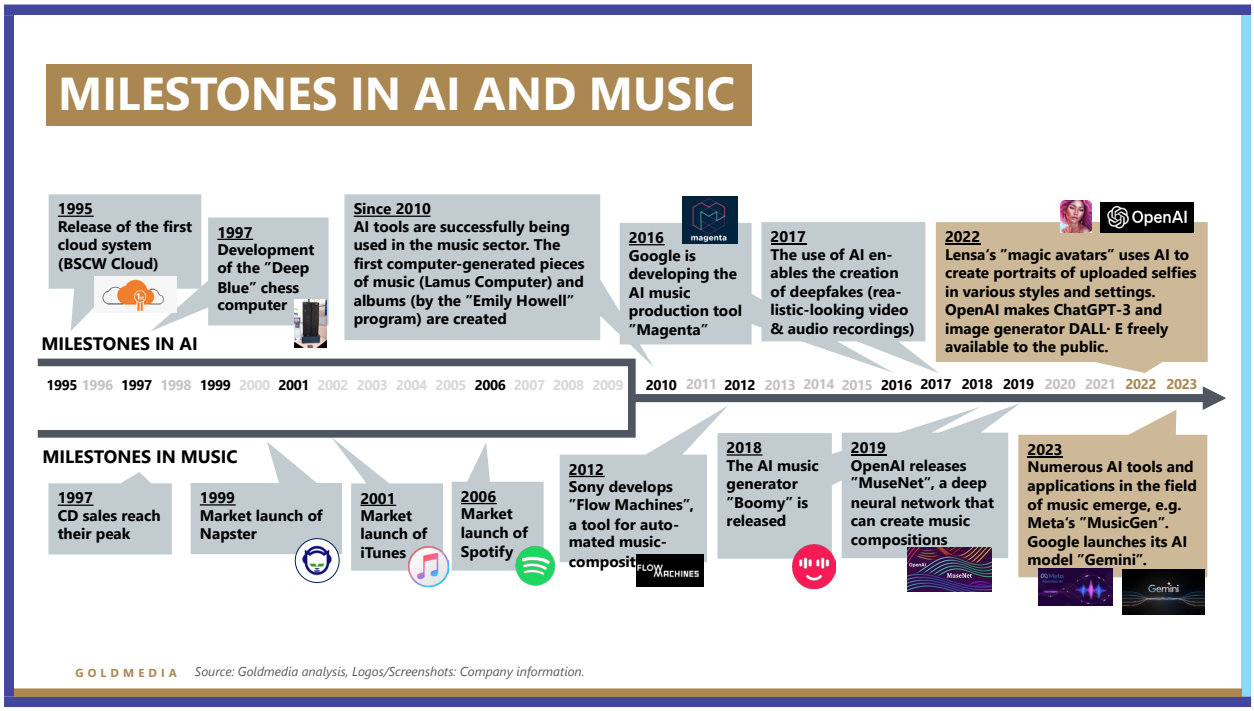
Furthermore, many questions and topics in this study not only include the creation of music in the narrower sense, but creative processes in general.

GOLDMEDIA

We mostly talk about generative AI, and you probably know about the different levels of AI, but we also try to cover editing and post-processing of music, supporting aspects like marketing and sales and distribution, but the main aim of this study was really

to give the authors and composers a saying in their perspective. So, I'm going to give you some data on what the musicians really think about it.

AI in music creation: there's a long development of music and AI. I'm speaking about AI actually since 7-8 years. In the first five years it was more kind of a joke. You showed something and everybody was like "Ha ha ha, that's funny, that looks like a joke…", you know, that's not serious. And some three years ago this changed and right now it's the reason why we're sitting here. But basically, nowadays we have on every single step of the music production process, a wide range of services or software tools to address any kind of thing you need: from writing lyrics to sound and sample search, to audio transcription, and all what helps to improve and create music:



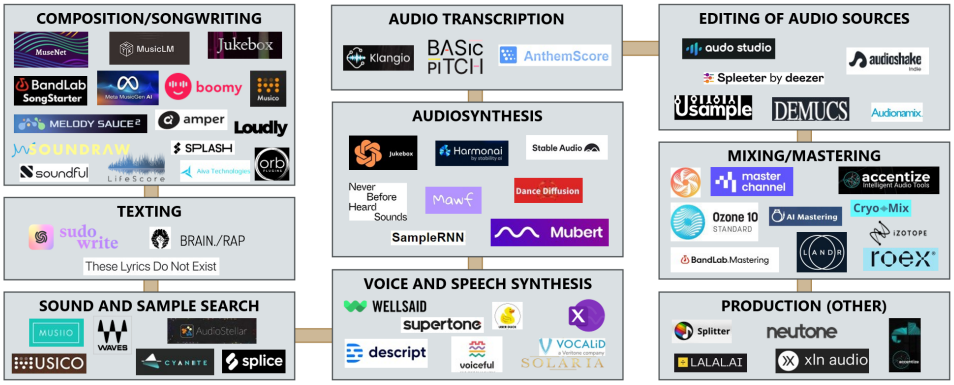
And to be honest, AI has already been a serious part of music production before, but we never considered it this way. There were already some sound processing tools, for example, in the production process. But right now, AI has become the standard practice providing a complete tool set for music production.

Gen AI is becoming bigger and bigger, but as I said, we must admit that there is AI for much longer already in the music production process.

And it's pretty good. What I showed you with *Sora* and *EMO* was only lip-syncing. But if you look into *Udio* or *Suno AI* it becomes very easy to create a song just from scratch. You type in what you want to have, a happy song about AI with Spanish lyrics and low-fi beats, and you get that.

One of the most famous things is voice cloning of popular music. That goes through the media all the time: like the last Beatles single that made it into number one again or also David Guetta, recreating Eminem or you can make Frank Sinatra now sing any song you want… There are many well-known examples for voice cloning.

VAST AND DIVERSE RANGE OF AI TOOLS IN THE MUSIC-MAKING PROCESS



The current "AI boom" is still ongoing. The range of AI tools for use in the music industry is diverse and vast. AI can be applied to every step of the creative process, from composition to distribution and supporting aspects like marketing and promotion of music.

GOLDMEDIA *Source: Goldmedia analysis based on Edwards & McGlynn (2023); Logos/Screenshots: Company information.* 18

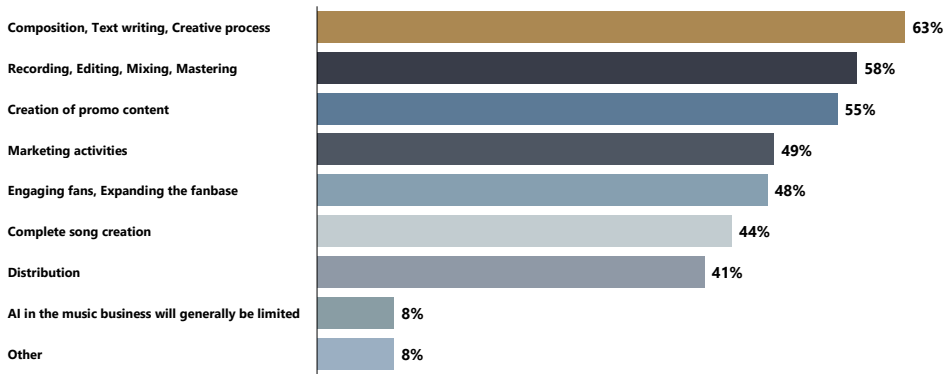
Also, and that shows the potential of AI, it's now possible to forecast the hit potential of a song. By calculating the impact and the quality of a song, it's already possible to use AI to say if this is going to be a hit or not. And I know I've researched this topic, so I find that quite amazing because it works pretty well.

In our survey, we asked the German and French composers and authors what areas of creation they see AI will be most likely to be adopted. 63% say it's composition, text writing, and the creative process, recording and also a lot of side aspects of the music production area. But there's a huge awareness, that two thirds of them already know

EXPECTED ADOPTION OF AI BY AREAS OF CREATION

63% of the music authors and creators surveyed believe that AI will most likely be adopted in the area of composition, text writing and the creative process.
The larger share also believes the adoption of AI to be likely in more technical areas of the creation process, such as recording, editing, mixing and mastering (58%) as well as the creation of promo content (55%). Only 8% believe that AI in the music business will generally be limited.

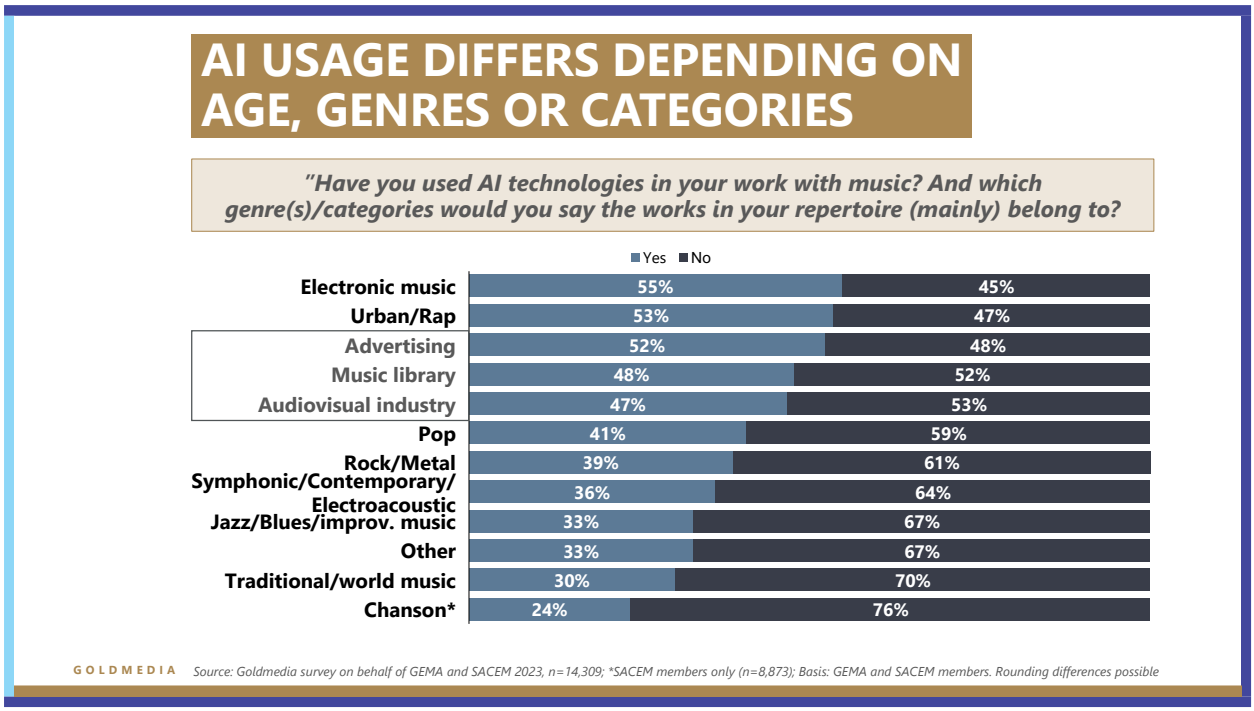
"In your opinion, in what areas of creation will AI be most likely adopted?"



GOLDMEDIA *Source: Goldmedia survey on behalf of GEMA and SACEM 2023, n=14,769; Basis: GEMA and SACEM members. Rounding differences possible.*

and think that this is going to happen. I can say that because we are also, at the moment, looking into the visual arts, and there are lots of visual artists who don't believe that they are under pressure from AI.

We also asked authors and composers: "Have you used AI technologies in your work with music already?" And there comes a very, I find, very understandable relation: if it's new forms of music like electronic or urban and rap, the majority has already used AI; if it's traditional, world music or *chansons* in France, less people are using AI. We also asked for certain categories and genres, and in the table, you can see the most already used genres of the music market where AI is applied. This is important because we're talking later about damage calculation. These are areas that are already strongly affected by AI, and can you see how often AI there is already implemented.

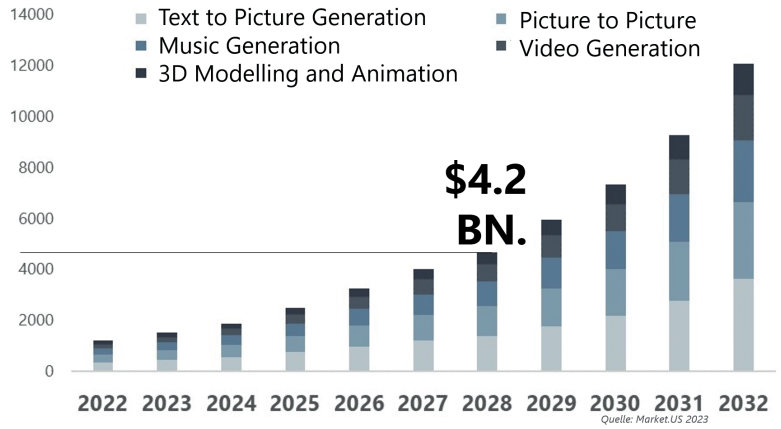


So, to give you some figures: 35% of the musicians, authors and composers in Germany and France have already used AI technology. If they're under 35 years of age, 51% have used it. So, the younger the people, the more intense they use AI already. 43% believe that AI can open up new forms of creativity. So, there's not only a negative perception of AI, but authors and composers are also very interested and supportive of AI usage. And 63%, as I showed you before, say that AI will be adopted in composition, text writing, and the creative process altogether. So, two-thirds, you can say, already are in line on what's happening here. But 64%, another two-thirds of the composers and authors in Germany and France are concerned because they think opportunities are outweighed by the risk that AI creates for them and their livelihood. I'm going to go about that into more detail now.

But first, let me talk about the market revenue and the market dimensions. *Open AI* alone made $2 billion revenue in 2023, but altogether we're talking about revenues of $3.7 billion in for Gen AI in 2023. 8% of that revenue belonged to audio and music. So,

REVENUES FOR GEN AI-SOLUTIONS IN THE ENTERTAINMENT-MARKET: >$4 BN. IN 2028

GEN AI IN MEDIA- AND ENTERTAINMENT, 2022-2032, IN MIO. USD



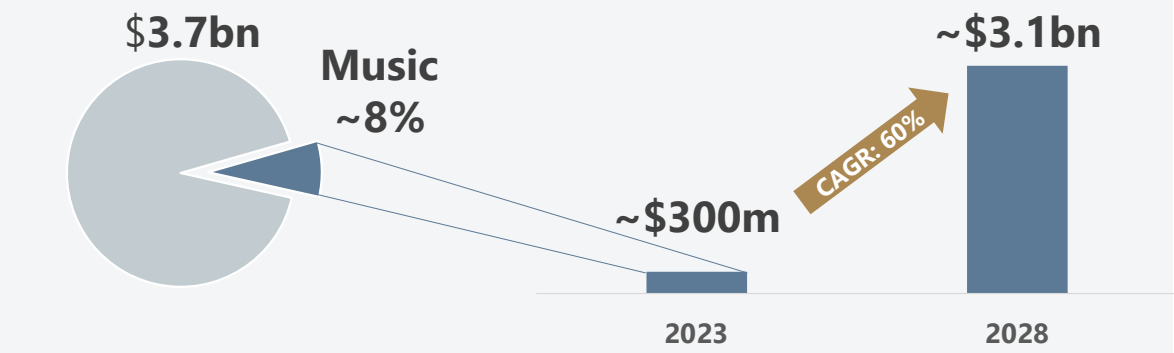
we are talking about a global audio AI-market of $300 million already in 2023. But we know from several forecasts that this market is about to grow every year with a compound annual growth rate of 60%. So, within the next five years until 2028 we're talking about a generative audio AI market worldwide of 3.1 billion dollars.

That's not little and that gives you an understanding of what's happening here. Similar things happen to the visual markets and

AI AND MUSIC: FAST MARKET DEVELOPMENTS WITH A VOLUME OF >3BN BY 2028

GLOBAL GENERATIVE AI MARKET VOLUME AND SHARE OF GENERATIVE AI IN MUSIC, 2023

FORECAST: MARKET VOLUME OF GENERATIVE AI IN MUSIC IN US$, 2023-2028



The share of music applications is estimated at $300m in 2023.[2] This corresponds to 8% of the total market for gen AI with $3.7bn in revenue in 2023[3]. The market for AI music solutions is expected to increase more than tenfold by 2028, with an average annual growth rate of around 60%[4] to over $3bn for music AI alone.

This means that in only a few years the market will reach a size that corresponds to 28% of global music copyright collections in 2022.[5]

GOLDMEDIA *Source: [1] according to OECD; Goldmedia analysis based on [2] Market.us and [3,4] S&P Global Market Intelligence; [5] according to CISAC.* 39

the text markets anyway. And I think there are various vulnerable sectors in the business already. Probably markets like music in advertising but also lo-fi and generic kinds of music. Session players will be replaced so you don't have to ask a guitarist to come in anymore. There are many areas which are already affected by AI.

THERE ARE VARIOUS VULNERABLE SECTORS IN THE MUSIC BUSINESS

While it is hard to say how and to what extent artificial intelligence will impact the music industry as a whole, there are some sectors that are expected also by experts interviewed for this report to be more vulnerable than others. "Generally speaking, the more generic a subset of the music industry is, the more likely it is to be assisted or partially replaced by AI generation."[1]

GOLDMEDIA *Source: [1] Brunotts (2023).*

Sync, Lo-Fi and other rather generic music

Companies or businesses looking for more generic music to soundtrack their assets or commercials may already be satisfied with AI-generated music in the future. Generic Lo-Fi music, which is listed in DSP (digital streaming platform) playlists for concentration or meditation, for example, could also be a genre that can be replaced comparatively easily by AI-generated tracks.

Amateur texting

Lyrics generators such as ChatGPT can already be used to generate ideas for music or song lyrics based on previous data. However, it is unlikely that these forms of AI can match the experience and value of professional songwriters – at least in the short term.

Video production

Video production is expensive, especially for independent artists. We may see more and more artists turning to AI-powered videos to reduce the cost of creating music videos and marketing materials.

Session players

Digital recreations of a wide variety of instruments are becoming more advanced, which could lead to fewer jobs for session players.

Automated technology in mixing/mastering

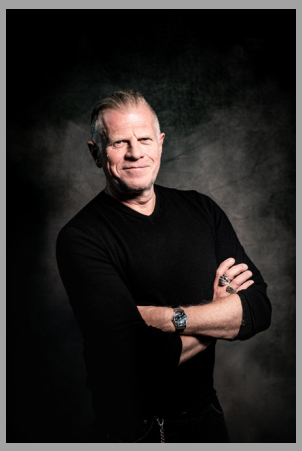
AI-assisted mixing and mastering is already standard in many places and can replace manual work in this area. Specialists in this area will have to expand their skillset accordingly.

And especially, we see a lot of music categories, let's say, fitness music, sleeping music, white noise, ambient music, wellness music... You could call it the "music carpet areas" which can be easily replaced firsthand by AI. And I think these fields are already strongly affected.

There is a German musician, Michael Beckmann, and he said that he's working a lot in the fields of audio consulting for movies and TV series. And he says, especially where you have a need for musical carpeting, AI already works well and there are already people losing their jobs, authors and composers, and he expects AI here to play a significant role quite quickly.

So, let me talk in more detail about the revenue dimensions of AI and music. First of all, there are a lot of lawsuits going on now. Music publishers sue Amazon for their AI, major record labels sue *Udio* and *Suno*. But at the same time, there are contracts made. For example, Prisa has signed a deal, I think with *OpenAI*, to use their tech sources here in Spain for the Spanish market.

The main problem, the main reason why we are talking about this AI issue is that generative AI needs loads of training data. Training data is scraped from the web, from databases, and if we're talking about generative AI music, there's a lot of music being taken from the web and used to train the databases. And I know there's a lot of discussion about whether this is about text and data mining (TDM), but honestly, all output of music AI is generally based on this training data.



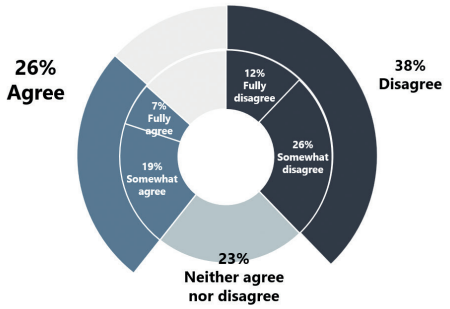
"There are already fields of application, for example in TV documentaries where only a musical 'carpeting' is needed to create a specific mood (...). AI already works really well in these cases. In this situation, a lot of career starters (...) are already losing their jobs.

In branches where financial resources are limited and where the artistic and sound-related demands aren't all that high, AI is expected to play a significant role quite quickly."

Michael Beckmann
Musician, film composer and music consultant

WILL HUMAN-MADE MUSIC BE REPLACED?

"Music made by humans is increasingly being replaced by AI music."



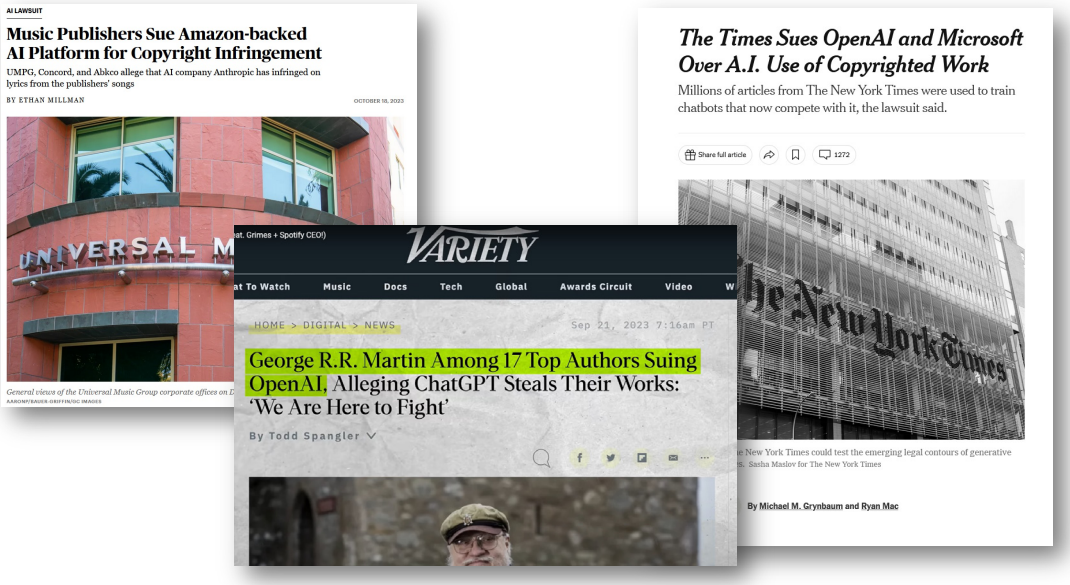
GOLDMEDIA

Source: Goldmedia survey on behalf of GEMA and SACEM 2023, n=14,760; Basis: GEMA and SACEM members. Rounding differences possible. Difference to 100% = No answer (13%). [1] The Associated Press (2023); [2] Zlatic (2023); [3] TuneCore (2023).

And we know, for example, that OpenAI, they put an internal, hidden prompt before you prompt your own request. This hidden prompt, which you don't see, is about two pages long and it says for example, "don't show any kind of racist or sexual stuff". But one of the last lines of this hidden prompt is: If the user asks for a book or a text, just give a summary. So, it's quite obvious, that gen AI systems keep all the data in their databases, trying to obscure it by only giving summaries. And so, I think it's fair to say that this scraped data is really part of a usage that should be remunerated.

In this context, we calculated the potential losses for music creators in Germany and France. Therefore, we went through any single revenue tariff of collecting societies. So, there is a tariff for playing music in a bar. There is a tariff for playing live music. There is a tariff for radio. We went through all these

VARIOUS COPYRIGHT INFRINGEMENT LAWSUITS ARE ALREADY TAKING PLACE



GOLDMEDIA *Source: [1] Statement of claim "Chabon et al. v OpenAI" (2023); [2] Grynbaum and Mac (2023); [3] Millman (2023).*

GENERATIVE AI IN MUSIC: HOW IT WORKS

INPUT

1. SCRAPING

- **Selection and acquisition of data** with which the AI learns and works.
- Storage of the data in a database to make it accessible for training.

2. TRAINING

- Using **scraped data and** algorithms, the AI learns to identify patterns and relationships in a dataset of human-generated content.
- Based on this, the AI can predict probabilities (of sound sequences, characters, pixels or words).

PROCESSING

- The training results in a calculated AI model in which the scraped data is not available as copies.
- During processing, the parameters (weights) derived from the scraping database are used instead.
- New content is generated based on the parameters and patterns learnt.
- The exact way in which the parameters are categorized in the model cannot currently be clearly described from a technical perspective.

OUTPUT

- The processing results in the output, which describes the products produced by generative AI. These products can take the form of texts, (moving) images and audio material.
- In many cases, the output product is not identical to the original. In the copyright debate, it is therefore disputed whether reproductions within the meaning of copyright law still exist after the training has been completed.
- With current models it is very likely that AI models will also directly reproduce training material in excerpts.

All output of generative-AI systems is generally based on the training that has taken place. The input consists of two steps: scraping and training. **Data of all kinds is first collected and stored** so that the AI can be trained with it in the next step.

This process is called scraping, whereby collected works and performances are stored in a database in order to be made available for training. In training, models are learned from the previously stored content, based on machine learning/deep learning.

GOLDMEDIA *Source: Goldmedia based on Initiative Urheberrecht (2023).*

REMUNERATION OF COPYRIGHT HOLDERS

Today

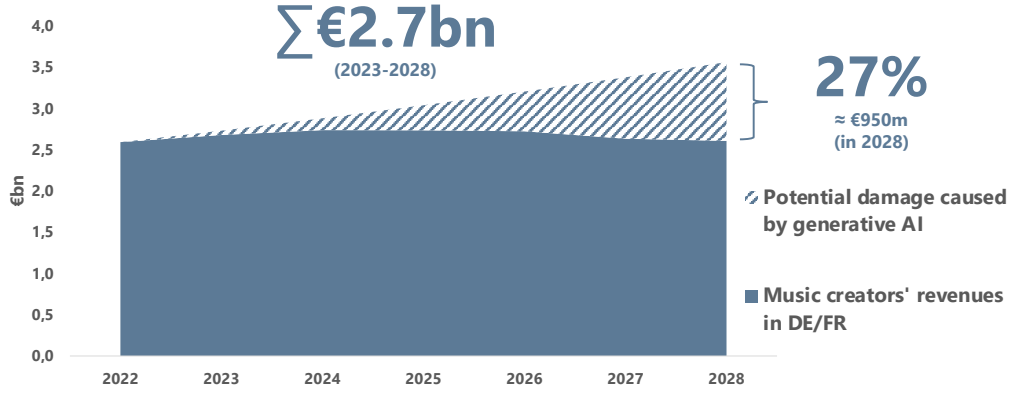
Compensation for financial losses caused by copyright infringement by taking and reproducing materials without permission for AI training.

A fair remuneration for future use of works created by humans for training of generative AI.

GOLDMEDIA *Source: Goldmedia survey on behalf of GEMA and SACEM 2023, n=14,654; Basis: GEMA and SACEM members. Rounding differences possible. *Fully disagree = 1%; Somewhat disagree = 2%. Difference to 100% = No answer (2%).; [1] Senftleben (2023).*

tariffs, looked at their revenues there, and we put an estimate of how much each specific market will be affected by AI. Because as I said, ambient music is more strongly affected, live music probably will not be affected as much, as there must be live musicians still. Except for the show of ABBA[4] in London maybe.

MUSIC CREATORS' REVENUES AT RISK DUE TO GENERATIVE AI IN DE AND FR, 2023-2028



By 2028, 27% of music creators' revenues will be at risk due to generative AI, an estimated cumulative damage of around €2.7bn for the period 2023-2028.

An increasingly predatory competition is to be expected for creators, especially in areas where AI is particularly likely to replace existing human-made music.

GOLDMEDIA *Source: Goldmedia analysis based on internal data and tariffs by GEMA and SACEM and from expert interviews.*

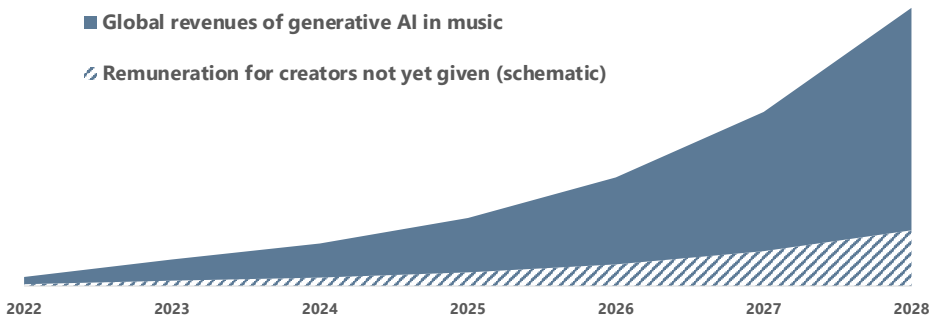
[4] https://abbavoyage.com/

By adding up all these markets and tariffs and looking into the development over the years, we came to revenues at risk only for the next five years until 2028 of 2.7 billion euros alone in Germany and France. We're talking here about 27% of the revenues of the collecting societies in Germany and France that would be lost due to AI, if nothing happens on the regulatory side.

But something could happen in the meantime, like a new legislation. And these 27% can be translated straight away into the livelihood of composers and authors, I think. While at the same time, the revenues of Gen AI companies are going up and through the roof basically, into the billions. It would be fair to say that there ought to be a share of these exorbitantly growing revenues given to the copyright owners for the usage of their works as training data.

(In this context, GEMA has recently published a **new license agreement** consisting of two areas of remuneration. The first part is a compensation for financial losses caused by the copyright infringement to train the databases of gen AI systems. And the second part is foresighted. It's an additional remuneration for the future use of works created by this generative AI. So, if you use a music AI system there would be a remuneration fee included and if your song, which was created by AI, would succeed in the charts, there is a second remuneration.)

REMUNERATION NOT YET GIVEN FOR COPYRIGHTED WORKS USED AS TRAINING DATA FOR GEN AI 2023-2028 (SCHEMATIC)



Copyrighted works are used as training data for generative-AI models therefore forming the fundamental basis for the origin and development of the market.

But authors and creators do not participate in the growth prospects. **So far, there is no remuneration system that closes the AI-generated financial gap for creators.**

GOLDMEDIA *Basis: Goldmedia analysis based on internal data by GEMA and SACEM and from expert interviews.*

But so far there is no remuneration system at work, but I think that it has become obvious that there is something to do. And asking the composers and authors, 71% said they have serious concerns because they are afraid that AI could lead to them no longer being able to make a living from their work. And I think it's fair to say, if you were in a company where they tell you, well, for the next five years you're making 27% less, I don't know whether you will be confident of being able to pay your rent in the future.

"There's no doubt that AI will be deployed more and more for creative processes. Composers in the audiovisual sector (...) are particularly worried that their livelyhoods will come under massive pressure from AI.

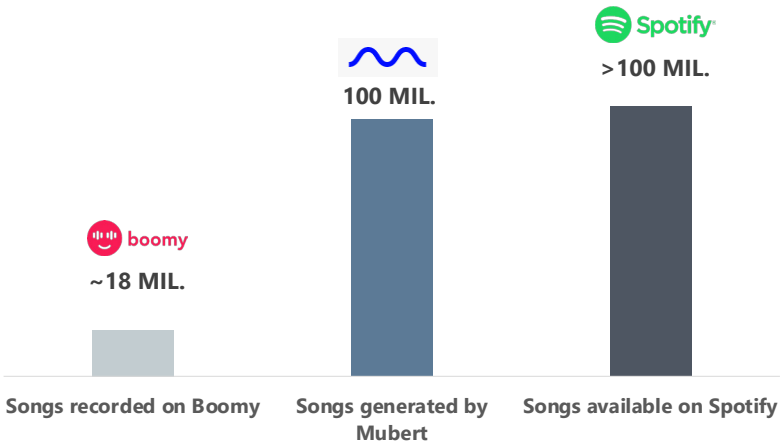
So it's therefore vital, for composers' and authors' livelihoods, that we find a solution that identifies (...) original rights holders in an AI production."

Helmut Zerlett
Film composer, producer and musician

Let me talk about **AI and music streaming** as well. It's not a minor thing that's happening there. There's a software called *Boomy*. I don't know whether you've tried that. You can type in a prompt, generate a music song and upload it straight away to Spotify. And that's very handy. There was even a scandal with *Boomy* because some guys produced music with *Boomy*, uploaded the songs on Spotify, programmed a bot that ran Spotify and listened to their uploaded music. So, they had like a money printing business there until Spotify stopped it.

There is another comparable software service called *Mubert,* which is pretty big. *Mubert* has created about a hundred million songs already, which is almost as many as you can listen to on Spotify. So, we have an amount of audio material created by AI which is quite impressive.

ALMOST AS MUCH AI-GENERATED MUSIC AS RECORDED MUSIC AVAILABLE ON SPOTIFY

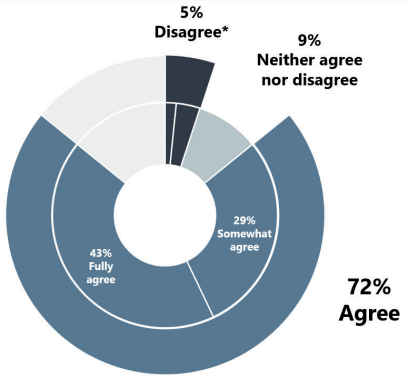


GOLDMEDIA Source: [1] Hoover (2023); [2] Boomy; [3] Spotify; [4] Music Business Worldwide

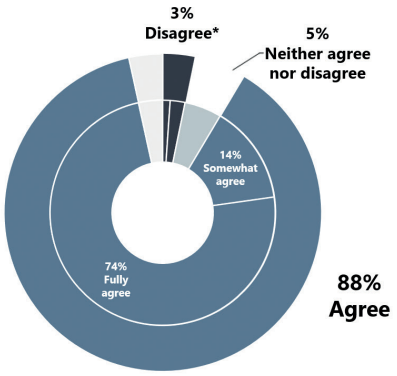
VISIBILITY ISSUES AND PROMOTION OF HUMAN-MADE MUSIC

Of the questioned GEMA/SACEM members, 72% agree that due to the increase in AI-generated work, issues around visibility and discoverability of songs on streaming platforms are becoming increasingly important. In an era of millions of published AI songs, the support of human-made music on streaming platforms is also important to creators. 88% of respondents agree that music made by humans should be promoted on streaming platforms.

"Due to the increase in AI-generated works, issues of visibility and discoverability of songs on streaming platforms are becoming increasingly important."



"Music made by humans should be promoted on streaming platforms."

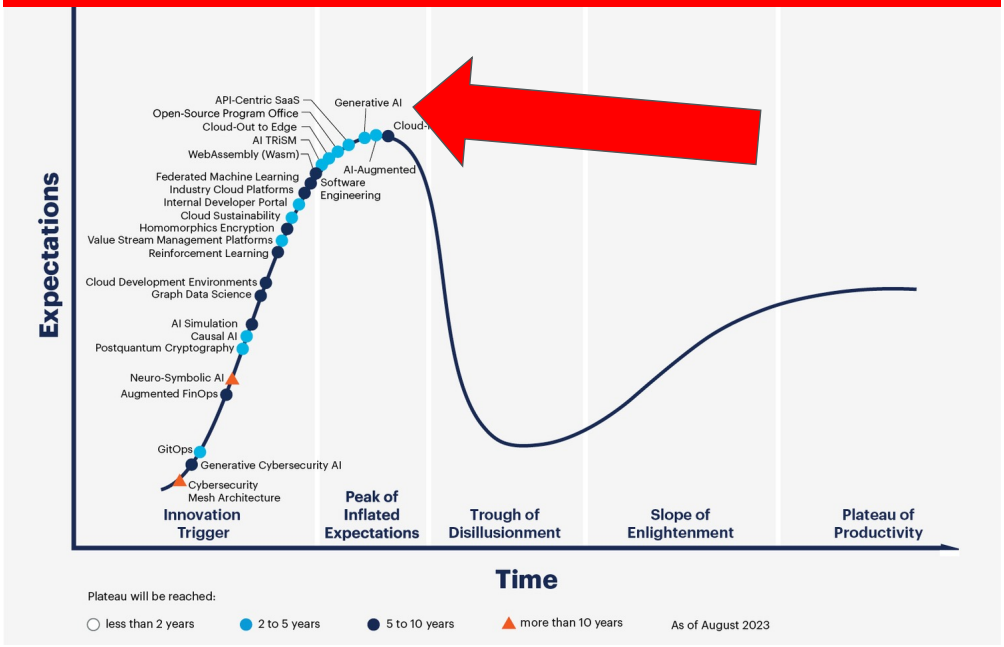


GOLDMEDIA

*Source: Goldmedia survey on behalf of GEMA and SACEM 2023, n=14,725/14,730; Basis: GEMA and SACEM members. Rounding differences possible. *Left/Right: Fully disagree = 2%/1%; Somewhat disagree = 3%/2%. Difference to 100% = No answer (14%/3%).*

Spotify said they will not ban AI made music. But with *Mubert or Boomy*, they weren't amused that so much AI music is flooding the market. Still, there's a lot of concern, especially in the recording industry, because they fear that there's too much duplicated content or simply irrelevant content there, and that comes into the way of normal creators who make a living from their work. If you would have 30, 40, or 50% of the songs on Spotify just being white noise, then it's hard to find the right human tracks.

GENERATIVE AI AT THE TOP OF THE HYPECYCLE



Let me have a look into the future. I am not sure whether you 've come across the concept of the *hype cycle of Gartner Group*[5]. I really like that. I think it's a great approach to understand technological developments. At the beginning, there is an innovation trigger, which means mostly new technologies: There's a new technological invention, something that's happening where suddenly some new services become possible which weren't possible before. So, this is the innovation trigger phase, where people and markets become excited about these new potential services. After that comes the peak of inflated expectations. And Gen AI is currently, in the perspective of Gartner, at the top of the peak of inflated expectations. After the peak comes the so-called "valley of disillusionment". So, the expectations go down and you say, "Well, no, it's not that big and promising". I experienced that with streaming music. Everybody was excited about music streaming and then it all went down in the 2000s and it took some 7-8 more years until Spotify came again into the market.

But then comes the so-called "slope of enlightenment" and after that the plateau of productivity. And the only question in my perspective is how many years it will take for Gen AI and music to complete the hype cycle. Two years? Five years? Maybe even ten years? But we will certainly reach the plateau of productivity with Gen AI and music. I'm pretty sure about that. And the question is how to organize and how to regulate that kind of new market.

[5] https://www.gartner.com/en/research/methodologies/gartner-hype-cycle

At the same time, there are loads of **new forms of collaborations** already coming up. *Boomy* once again is now having a global distribution deal with *Warner*. *Warner* and *TikTok* work together, and I showed you already Mark Zuckerberg on the first slide working on some kind of music. All social media platforms have a very high interest in starting their own music AI in order to get rid of the payments they now make for using human-made music. For the social media platforms, they hope to save money.

And others hope to save money too: the German media company *Axel Springer* already collaborates with *OpenAI*, like *Prisa* does in Spain now. And at the same time, *Axel Springer* kicked out 70 journalists from their news app, because they can now produce the news content for the app solely with the help of AI. So that's where it's going.

So, let's have a final look at **what music authors and creators demand.** That was part of our survey again. 93%, it's an amazing figure I think, of the authors and creators in France and Germany demand that policy makers should pay more attention to the challenges of AI.

95% demand that the AI providers should be obliged to disclose when they are using copyrighted works as training data. So far, nobody has asked them. So far, they had no saying in that.

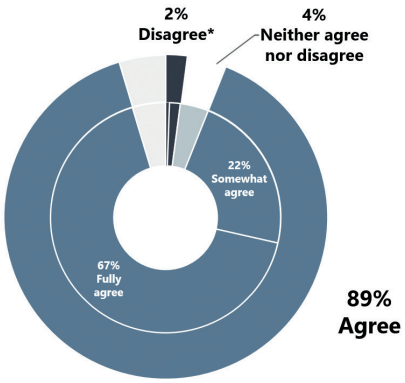
90% also claim that copyright holders must be asked for **permission.** Not very surprising. So, the usage of training material for gen AI is about consent. And 90% of the creators demand that **remuneration** should happen, meaning that copyright holders should benefit financially when their works are used as input for training data for AI through a **license agreement.**

So, this is what the authors and creators in France and Germany demand: **attention, credit and transparency, consent and remuneration.** I personally find that absolutely understandable if you're looking at the financial perspectives for creators.

DEMAND FOR TRANSPARENCY ON STREAMING PLATFORMS

Lack of transparency in streaming services' algorithms and in the distribution of music on streaming platforms poses a problem for many creators. Most of the questioned GEMA/SACEM members (89%) therefore agree that criteria for creating playlists as well as music recommendations based on AI/algorithms must become more transparent. Only about 2% disagree with this statement to some extent.

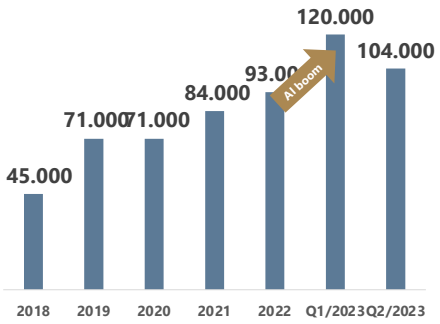
"Criteria for creating playlists as well as music recommendations based on AI/algorithms must become more transparent."



IEDIA *Source: Goldmedia survey on behalf of GEMA and SACEM 2023, n=14,722; Basis: GEMA and SACEM members. Rounding differences possible.*
**Fully disagree = 1%; Somewhat disagree = 2%. Difference to 100% = No answer (5%).*

CONCERNS ABOUT LARGE NUMBER OF NEW AI-GENERATED TRACKS

GLOBAL NUMBER OF NEW TRACKS UPLOADED TO DSPS EVERY DAY 2018-Q2/2023



The number of new tracks that are uploaded reached a new peak in the first quarter of 2023, with 120,000 titles being uploaded to DSPs every day. After an upward surge in AI-produced songs in Q1, the figure has dropped slightly but has still stayed high.

Artists and experts interviewed for this study as well as music industry executives have become increasingly concerned about the large number of new tracks being uploaded to DSPs and worry this deluge of new content could erode the presence of professional artists.

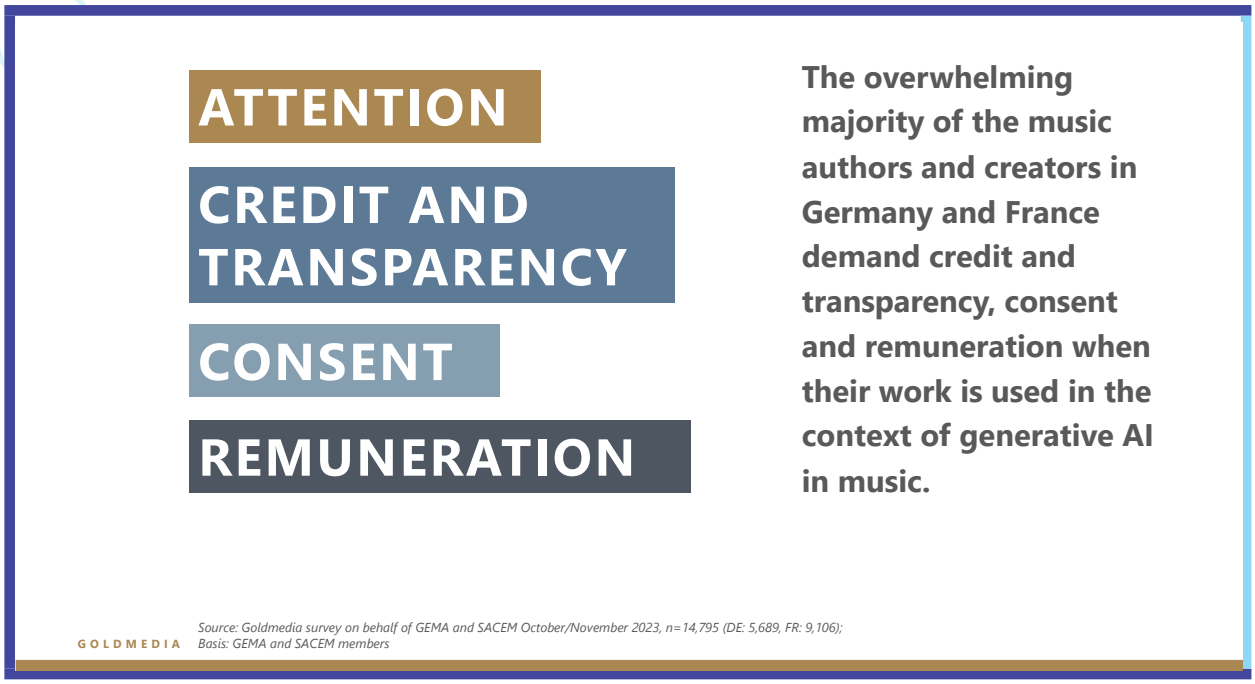
It is feared that there will be a homogenisation of music, as similar recommendations are used by the AI models for all generated tracks. Prejudices and stereotypes in music are perpetuated by poorly trained AI models, which can lead to a restricting of musical diversity.

Business leaders at some of the DSPs worry that low-quality content could damage the user experience. *"There's a lot of duplicated content, there's a lot of content that is not even music... and at a certain point you get way too much content that is useless for the users. And it starts creating a bad user experience."*

Deezer CEO Jeronimo Folgueira
during an earnings call on 1 March 2023

GOLDMEDIA *Source: Marconette (2023); Tencer (2023).*

And there's Jean-Michel Jarre, the French musician and CISAC president. He said that we should define an economical framework in which intellectual property has to be respected, and regulations are considered access to freedom. I think AI is an opportunity not only for some international software companies but with the right regulations, AI could also become a new relevant revenue stream for human authors and composers.



So, there are many fields of action, and I think we have discussed loads of these areas. I tried to put together the three issues of consent, remuneration and transparency and I think we could discuss that in more detail during this day. Compensation, a strengthening of collective rights management, the development of compensation schemes, industry agreements, all that I think are urgent fields of action.

I thank you for your attention. I think the study will be translated into Spanish[6] and it's already online, so you can download it in Spanish now and I hope you have a nice discussion. Thank you.

QUESTION SESSION

Question 1

I have two questions. One, whether the results, because it's France and Germany, and you were giving the total results, whether you saw differences between the responses or the market development in France different from Germany, because I can assume that it may be a different cultural interest or different types of music, which are more popular in one country than another. So, whether there were differences, because you know we're interested also in doing a Spanish study.

And the other question is, when you mentioned the white music on music platforms, that has been used by some uploaders to obviously get more royalties from *Spotify*, more money from Spotify. We

[6] https://institutoautor.org/el-instituto-autor-publica-la-traduccion-del-estudio-la-ia-y-la-musica-realizado-por-golmedia/

also know that in some cases, some music platforms are also using AI to overpopulate the music which they own by themselves, so the same DSPs, and that is a way to undervalue the rest of the music which is being licensed, by right owners, whether that has also been studied by the Goldmedia study?

Klaus Goldhammer: No, we didn't go into more detail about the social media platforms. We covered that on a secondary data analysis, but we didn't go into more detail because that would have meant to research the developments of social media platforms in detail. It would be very interesting but it's hard to track from the outside what is happening on an entire social media platform. But in general, it's well known what you said: they're trying to obscure and diminish the returns for human composers and authors.

To your first question, yes, there are differences in this presentation. I only showed the combined figures, but we found that there are certain differences in terms of cultural acceptance.

Sometimes it's only about the size of the revenue that's happening in certain tariffs. So, some areas are bigger in France, some areas are bigger or smaller in Germany. But the interesting part is also that you have in every collecting society certain areas which are not covered by the other. So, for example, SACEM does cover music videos, and that is a small part at Gema. But in France, it's a big issue. So surely the French side was affected there more strongly because there's a tariff with a much bigger revenue in France than it is in Germany. So therefore, yes, there are differences. But the general trends are very much aligned in both countries.

Question 2

I'm **Luis Ivars,** music composer, and I would like to talk about the noise, the white noise songs that appeared in Spotify, and that's unbelievable, but they arrived at the trending position, the topic position, one billion reproductions. So, they got the maximum. Although many people suspect that perhaps this was a movement of the Spotify people inside. The question is that at the end, perhaps the problem is that AI is absolutely a good tool, a positive tool. The problem is that it is being managed by human intelligence. That's the problem and this is a business and we, the creators, are losing a lot of power in this battle. And I was thinking and asking myself, perhaps we need a global authority to fight against this global situation of development of the AI because all the main developers are big companies. So, we perhaps are having a change in the balance of power in the world. I do not know if, in your wide study, you have reached any conclusions about this.

Klaus Goldhammer: First of all, I wouldn't look too heavily into the white noise area, and this is currently the area where it is easiest to bring AI compositions into the markets. But any other advanced composition is possible as well. So, it's not only about simple music carpets. Beethoven's 10th symphony, The Unfulfilled, has been completed by AI. So, we're not talking here about white noise music, we're talking about every kind of composition and every kind of music being perfectly created by an AI. That's the general point.

I agree with you; it would be nice to have a global institution to regulate AI. My fear is that it might take some 20 years until we would establish something like that. But we

have the EU that works pretty well. I think this week and last week we had already a new AI regulation being put into practice.

So, I'm pretty hopeful that at least on an EU level we find a solution and that would make a lot of sense to work on that level as a first step. And, at the same time, it must be pushed by government bodies. So, I think it's a challenge for country governments as well as the EU to set up some regulation that establishes a certain level of remuneration for authors and composers. And I hope that will not take 20 years.

Question 3

Andy Ramos: Thank you very much for your presentation. The music industry is facing a new era. That's what happened 20 years ago with user-generated content. Now it's AI-generated content, and we will have to navigate in this new one. And this is a question for you as an economist, if we should look for a remuneration regime for when training AI, so AI providers should remunerate or ask for a license from CMOs or other private entities, publishers, etc.

Up to now, traditionally, the money collected is being distributed among the authors or other right holders based on the use and how much a musician, a composer or a composition has been aired or exploited, etc. But now where there is not always a link between the AI-generated song and a specific composition, as long as the AI generated content may have been created using the patterns, the trends, the correlations of the weights of thousands of songs (for instance, if you are asking for a Beatles-style song, obviously there is a connection but, if you are asking the AI to create a urban style or a reggaeton song or a soundtrack, you cannot connect directly this AI song with a particular Hans Zimmer work or a specific composer). If you are the CMO or the publisher who is collecting money from the IA providers, how do you think that money should be distributed among authors where there is no connection between, in principle, in some cases there can be, but in most cases the way AI nowadays, not 10 years ago, but nowadays, it's configured, how do you think that, as a economists, they should get and distribute the money?

Klaus Goldhammer: First of all, I would be afraid if I'm Hans Zimmer, because it's very easy to put all the music of Hans Zimmer together and prompt: "Create a new movie music in the style of Hans Zimmer!" Secondly, I'm not a lawyer, so that was not part of the study to propose a certain regulation and how to imply that. On a general basis, I guess one could develop a certain kind of correlation between the output and the input, so what has been used.

But I believe that this would be too complicated. I would consider something much easier. If you demand a certain share of the revenues of AI companies and the sum is then distributed by the collecting societies on whatever kind of key or correlation which can be defined on a fair basis. Be it the number of songs, be it the number of usages in other markets, or be it just in any other kind of way. I didn't propose any kind of key here, but I think that will be part of the discussion.

Question 4

Thank you so much for your contribution. As you said, generative artificial intelligence can produce a huge amount of content. This content circulates through-

out the communication infrastructures. So, my question is, has this impact on communication infrastructure being estimated?

Klaus Goldhammer: You mean in terms of the data? Well, no, not in our study, but audio is actually not that terribly demanding in terms of data usage. I think the strong impact will be happening if we see more and more video gen AI systems coming because they need a lot more infrastructure and a lot more computing power and a lot more data infrastructure. Audio is not that demanding for the networks so far. So, I think that's not a problem.

The regulation of artificial intelligence in Europe: a humanistic approach

Leonardo Cervera Navas

Secretary General, European Data Protection Supervisor

Good morning.

It is a pleasure to be in this International Congress on Intellectual Property and Artificial Intelligence, led by Marisa Castelo. I am very impressed by the quality of speakers and presentations. Congratulations on a successful event. Please accept this small gift from me, the book published by the Legal Service of the European Commission: 70 Years of European Union Law[1].

I will divide my talk today into two blocks: one, more technical, in which I will talk about intellectual property and artificial intelligence, in which I will try to very briefly summarize the regulation of intellectual property rights in the Artificial Intelligence Regulation that has just been voted in the European Parliament, and another, more philosophical or personal, from the independence conferred on me by leading an independent authority such as the European Data Protection Supervisor, which, as you know, is a completely independent institution of the European Union.

So, I now come to the first part, the more technical part, and let me tell you a little bit about this institution of ours of the European Data Protection Supervisor[2] because, perhaps, some of you may not know it so well because it is somewhat removed from your professional field.

The Supervisor has a threefold nature: firstly, that of being a data protection authority, in the same way as the Spanish Data Protection Agency (AEPD). Our scope of action is that of the European institutions, which means that we monitor the processing of data by agencies such as Frontex, Europol or Eurojust. That is to say, although we do not monitor companies, as the AEPD does, you will agree with me that monitoring Europol is a significant task.

Secondly, we are an EU institution, on an equal footing with the European Commission or the Parliament, and we advise the EU legislature on data protection: every time there is a legislative proposal with a data protection angle, the European Commission is obliged to consult us. You are under no obligation to do as we advise, but you must consult us, and our views are often taken on board by the European Parliament and included in its negotiating package.

[1] https://op.europa.eu/es/publication-detail/-/publication/f040f2c0-10d9-11ee-b12e-01aa75ed71a1/language-es

[2] https://www.edps.europa.eu/_en

The third aspect of my institution, which is the one that has brought me here today and which is going to start in a few weeks, following the approval of the Law by the European Parliament on Wednesday of this week, is that of supervisory authority for the Artificial Intelligence Regulation for EU institutions, a new competence that we take on with great enthusiasm.

Sonia Pérez Romero, the head of my office, who is in charge of implementing this new supervisory competence, came to see me today.

I have to confess that when the Instituto Autor (Intellectual Property Institute) invited me to participate in this international congress, I was very reluctant. Although I was working as an administrator in the Copyright Unit of the European Commission a few years ago, as I have focused on data protection since joining the EDPS in 2010 I no longer consider myself an expert on intellectual property rights. I do not consider myself an expert in AI regulation yet either, because we have just started with this function, but, in the face of the invitation, I told myself that I had to get out of my comfort zone, get up to speed with these matters quickly and come to this Congress, more than anything else, to learn. And the truth is that I have learned a lot and it will help me to do my job better. Furthermore, it is an opportunity to share with you my vision of how we should approach this topic of artificial intelligence, which is what I am going to tell you in the second part of my talk.

The theme of this international congress could not be more appropriate and pertinent, because intellectual property rights are truly at the epicenter of the debates and legal battles surrounding generative artificial intelligence, especially in the United States. Yesterday there was already a lot of good talk, by people more knowledgeable than me, about the investigation opened by the *Federal Trade Commission* or the litigation that the company *Getty Images* is taking or that of *The New York Times* against *OpenAI*.

It has also been stated that, fortunately, in the European Union, the situation in terms of legal certainty is a little better than in the United States, because the Artificial Intelligence Regulation, thanks to the intervention of our legislators, and I want to put on record the presence in this Congress of one of our Members of Parliament, Ibán García del Blanco, who has been in the trenches fighting for intellectual property rights, thanks to that, because we have an AI Regulation[3] that has taken into account the need to ensure respect for copyright in general and, as far as providers of general purpose AI models ("GPAIs") are concerned, makes it clear that they must respect the Union's copyright law and comply with transparency obligations.

In the Chapter of the AI Regulation on General Purpose Models, regarding the protection of intellectual property rights, Article 52 (c) and (d), state that GPAI providers must:

1) Implement a policy to respect EU copyright legislation, in particular to identify and respect, also through state-of-the-art technologies, reservations of rights;

2) Develop and make available to the public a sufficiently detailed summary

[3] Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024 laying down harmonized regulations in the field of artificial intelligence https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689

of the content used for the training of the GPAI model, according to a template provided by the AI Office. It will be necessary to follow very carefully the level of detail of this template stipulated by the AI Office and how to make this obligation compatible with trade secrecy, which, logically, will be the objection raised by the owners of these artificial intelligence models.

The details of this sufficiently detailed summary are mentioned in Recital 60. (K) of the AI Regulation.

There has also been much good talk about Articles 3 and 4 of Directive 2019/790 and the need to develop a commonly accepted standard for the expression of the reservation of rights by rightsholders, which would prevent the scraping of protected text, images and videos for commercial purposes.

Therefore, in principle, the European rules are clear and forceful as regards the protection of intellectual property owners, but, as the proverb goes, "it is easier said than done", and we will have to see how this is going to be done in practice in order to achieve effective compliance with these obligations.

The implementation of the AI Regulation, as far as general purpose artificial intelligence models are concerned, has been entrusted to the **EU's European Artificial Intelligence Office,** a new Unit within the Commission's DG *Connect*, which started work on February 21, 2024 and is expected to have a staff of about 100 people, in two to three years.

From the European Supervisor, we will collaborate very closely both with the European AI Office and with the national AI supervisory offices of the Member States, because the European Supervisor is also part of the European Union AI Board foreseen in the Regulation.

I assure you that, from my participation in that Board, I will convey to my supervisory colleagues the concerns that have been raised here and, surely with the help and advice of Ibán, we will try to ensure that this issue of intellectual property rights and Artificial Intelligence is taken very seriously.

I also believe that I will be able to contribute from the European Supervisor on this issue, because, if you think about it, the question of the respect of intellectual property rights by AI systems is not far from the question of the respect of data protection rights by those systems. There will be many cases in which intellectual property rights and also data protection rights will be at stake and, more or less, the protection mechanisms will be very similar since, in the end, it is a matter of respecting the rights attached to this digital information. We are talking about data, digital information, the use or processing of which is subject to certain rules, whether data protection or intellectual property, so any AI system that intends to use such data must ensure the effective protection of all rights associated with such data, whether intellectual property or data protection.

Therefore, we are going to need a comprehensive and multidisciplinary protection in which we are going to participate, without a doubt, from the European Supervisor and from other data protection authorities.

I will now conclude the first part of my presentation and move on to the second part, more personal or philosophical, if you like, which is the result of 25 years of experience working in the EU on digital policies, first at the European Commission and later

at the EDPS. Therefore, I ask you, if any of you want to quote what I am saying here today, to quote what I have stated so far, and not what I am going to say from now on. But, if you ignore my wishes and quote me, at least let it be noted that these are the personal views of Leonardo Cervera and do not represent either the EU or the European Data Protection Supervisor.

Before I get into the philosophical side of things, allow me give you several clues as to what I think is going to happen in the coming months in relation to AI, based on my experience of what has happened before with previous disruptive technologies, and then give you my view of what I think the European approach to this issue should be from a philosophical perspective.

When I worked on intellectual property issues, I witnessed how, every time a disruptive technology appears (years ago it was *Napster*, which turned the music industry upside down; now it is AI, which is altering many things, among them, no doubt, the cultural and creative industries), we humans react more or less the same: at first, there is a lot of uncertainty, the ground shifts under our feet and many people try to oppose the new technology. This has also been the case now: there have been manifestos signed by renowned people asking for a moratorium.

I do not think this makes much sense, it does not usually do any good. These advances cannot be stopped. The only thing that can be done is to accept the reality and channel this new technology as far as possible, for example, by means of legal regulation, as the EU has just done, well in advance, because, for this AI Regulation to have been brought to a vote in the European Parliament now, the proposal and the drive to implement it should have started years ago.

Last Friday, the European Commission's Legal Service Conference was held, an annual event attended by great figures of European law to speak, and one of the co-drafters of the Artificial Intelligence Law in the European Parliament, Dragoş Tudorache, stated something very interesting: That the European legislature had "drawn" the AI Law with "broad strokes", with a "broad brush", because, dealing with something so novel, it is neither possible, nor advisable to go into the details of the regulation right now, and leaves the final touches to the supervisors, to the regulators. It is a great responsibility that we now have.

I think this has been a smart decision, which entrusts a great responsibility to the regulators, such as the European AI Office and the EDPS, for example, in the preparation of that template that we will have to approve establishing how transparency is guaranteed. This, in good legal technique, should have been established by the legislature, but we will do our best.

The next thing that happens with the emergence of a disruptive technology is that, once the legislature has reacted to it, the players who are benefiting from this new technology, who are making money, start to push for the law itself or its application to be adapted to their preferences or their commercial needs.

This has already happened many times. We already experienced this pressure against data protection laws in the past, for example, when 25 years ago, the CEO of *Sun Microsystems* stated: "Anyway, you have no privacy whatsoever. Get over it". Fortunate-

ly, we Europeans did not buy this discourse and approved the General Data Protection Regulation (GDPR)[4], we started applying it, with the consequence that today it is the world regulation: it has become a global standard.

Therefore, neither opposing the technology, nor opposing the laws that regulate the use of that technology, is of any use.

The same, I understand, is going to happen with the EU Artificial Intelligence Regulation. What needs to be done, and in this I sympathize with the industry representatives, is to demand that these regulations, which provide legal certainty and are therefore by definition beneficial to business, are applied intelligently. This is what I have come to call **the cost of non-Europe:** the cost of legislative fragmentation, of unequal *enforcement*, of different interpretations of the regulation. And I will refer briefly to the governance issue at the end. But of course, with the experience I have in data protection for so many years, I believe that the question is not whether the law is good or bad; the law is always good because it gives legal certainty and helps businesses. The question is how we are going to apply this law in practice.

Twenty-five years ago, when the European Communities were the world's leading commercial player, we Europeans could afford the costs of poorly fine-tuned application of European laws. Now, I do not think we can afford it. Similarly, when Europe and the U.S. shared most of the trade and wealth around the world, they could afford to fight each other, as we have been doing in the field of data protection for decades, for example. I do not think this is a viable option today, especially with regard to AI regulation.

Europeans and Americans need to have interoperable regulations that are rigorously and pragmatically applied, so that we all benefit from regulation, but without having to endure unnecessary bureaucracy. Therefore, Europe and the U.S. must face the regulation of AI together, as well as the field of intellectual property and I am saddened to see that the U.S. negotiating position in the Council of Europe discussions on an AI Treaty is far from this unified approach which I believe is very important.

That is why I really liked the conversation that Andy Ramos and Professor Jane Ginsburg had yesterday in this Congress, because, indeed, we cannot continue having such big differences in copyright protection. I believe there needs to be more maximum interoperability with our U.S. friends and allies.

Humanistic approach to AI regulation:

And finally we come to the philosophical part of my talk, in which I am going to offer you my personal view, in the long term, of how I believe that we Westerners, and I am not just saying Europeans, but also Americans, should face this new phenomenon of artificial intelligence.

This personal vision of mine can be summed up in two words: digital humanism. And in another concept that is also stated in two words: good governance.

[4] https://eur-lex.europa.eu/EN/legal-content/summary/general-data-protection-regulation-gdpr.html

I will start with **digital humanism.** As you surely know, humanism is a philosophical current that emerged in Europe in the 15th and 16th centuries. The first humanists, Dante, Petrarch, Erasmus, Juan Luis Vives or Francisco de Vitoria, were intellectuals who dared to imagine a more beautiful, nobler and fairer world than the medieval darkness in which they still lived. This philosophical current promotes the dignity, autonomy and freedom of the individual and is still very much alive today, in our democratic constitutions and also in the EU Charter of Fundamental Rights, which is, de facto, our European Constitution.

Article 1 states verbatim: "*Human dignity is inviolable. It must be respected and protected*". And only later does it speak of the right to life, that is, it puts the dignity of the individual before the right to life. One cannot be more humanistic. This is Europe at its heart.

I do not need to say how important the humanistic approach has been for the birth and consolidation of copyright. The universe of intellectual property rights revolves around the author, their unique personality, inventiveness and creativity. Machines cannot replace authors, no matter how intelligent, autonomous or cheap these machines may be, today or in the future, because if we do so, we will be destroying the universe of intellectual property, which revolves, like the sun, around the person of the author. It is a concept of principle: you cannot replace the person with the machine, you cannot replace the author with an algorithm.

We Europeans made the Renaissance, then the French Revolution, displacing God from the center of the universe to put man at its center, to now see man or the author replaced by a machine. We Europeans cannot do that. We must resist this technological determinism, which seems to lead us to a world in which machines are more important than people. That is why our European regulation on artificial intelligence declares itself to be human-centered, but we need to go far beyond that statement of intent, because I do not see that most of our political or business leaders have understood how important it is to translate our flesh-and-blood humanism into the digital sphere.

It would seem that the digital world allows other rules of the game, but we should not be mistaken: humanism must also be in the digital world, hence my insistence on speaking of a digital humanism.

Technology has to be at the service of humans and not the other way around. The first regulation governing digital policies in the European Union dates back to 1995: the Personal Data Protection Directive 95/46. Recital 4 of the old Data Protection Directive already stated it very clearly: *the processing of personal data must be designed to serve humankind.* It is such an old regulation that it has been repealed by the Regulation. We are talking about an old regulation where negotiations began in 1989.

And what happens when we do not apply digital humanism? What happens when technology is not designed to serve humankind? What we are experiencing in the world today: that the lights of the Renaissance and the Enlightenment are going out and we are heading, little by little, to the darkness of the Middle Ages.

But the problem is not only the lack of digital humanism. The problem is also a lack of good governance.

Digital humanism must be like a beacon that illuminates everything that is done in terms of technology, but we also need **good governance.**

At this point, I would like to refer to a person very unknown to most Spaniards: our founder, Jean Monnet, who stated, 75 years ago, that the origin of most of the problems experienced by humankind in the 20th century derived from the inability of our governance structures to adapt to the new realities caused by new technologies.

Jean Monnet is one of humankind's great visionaries. Henry Kissinger said of him that, if we had not had Jean Monnet, today's world would be very different.

Can you imagine what the Nazis could have done if they had not had the propaganda machinery of radio or cinema? Absolutely nothing. But who could stop the Nazis' at that time with the governance structure we had? They had free reign to do whatever they wanted.

That is why Jean Monnet, who was a very persuasive man, using humanist values, managed to convince the political class of the 1940s and 1950s that a great change was needed in the governance of our society, a supranational structure, which led to what is today the European Union, which has given us decades of prosperity, of peace, unparalleled in the history of humankind. For Spain, the European Union has been everything. Spain has been transformed thanks to the European Union.

Likewise, at the end of this first third of the 21st century, in the *Roaring Twenties* of the 21st century, we must accept that new technological developments and AI, in particular, are rendering our governance structures obsolete. Whether we like it or not, we live in a world that is much more complex and much more dangerous than before, in which concepts that until recently we all took for granted, such as the defense of copyrights, the strength of the rule of law or our democracy, are no longer as solid as they used to be.

Just yesterday Emmanuel Macron was saying that France does not rule out sending troops to Ukraine, that the policy of appeasement does not work and that the best way to defend oneself is to prepare for war. This is exactly what was said in Europe in the 1930s: history repeats.

We Europeans have to wake up from this complacent dream that we have had for many years and we must start doing things better, with more unity, with more determination, also with regard to the effective protection of copyright, of our authors in the European Union.

Many of you have already mentioned the ***"Brussels effect",*** which we have already seen in the data protection regulations. Among diplomatic circles, the joke is already circulating that technological changes are made in the United States and regulated in the European Parliament, born in Silicon Valley and regulated in Brussels, given the inability of the U.S. Congress to agree even on the time at which coffee is served. *"Let them invent"*, Unamuno said.

And I think we are going to repeat the *Brussels effect* with the AI Regulation, but I think we have to be even more ambitious: Europe

has to compete in the championships for the world's leading companies, both in technology and in the cultural industry. We have to invent too.

We need to leave behind our complexes, we need to leave behind our retrograde and totally anachronistic nationalisms, we need to unite in this great humanist project, which is the European Union of democratic values, and lead the world, because we, Europeans, can make, as the humanists dreamed, as Juan Luis Vives or Francisco de Vitoria dreamed, we can make a nobler and fairer world.

Thank you very much for your attention.

QUESTION SESSION

Question 1

Thank you, Leonardo. Yours is a very refreshing perspective. Living in America, you see that comparison a lot: *"America innovates, Europe regulates and China copies"*. And it is true that, in terms of regulation, we are ahead, but, in relation to the synchrony that the U.S. and Europe should have as allies, I see a really worrying situation. Right now, it is noticeable how regulation is bifurcating, how the United States is going in one direction and Europe in another. The transparency requirements that will be demanded in Europe, for example, are not considered in the Americas. Do you think it is going to take that *Brussels effect* until companies have a significant commercial presence in Europe? What do we need to do to align American and European regulatory incentives or interests more closely?

Leonardo Cervera: Well, I think the person who can best answer that question is Ibán, because he is in the trenches. I am involved on another front; his is building bridges with the U.S., traveling there and establishing contacts.

In my opinion, the most important thing is to take inspiration from Jean Monnet. We cannot continue to bear the cost of non-Europe. Europe is no longer the hegemonic trade leader it was 30 or 40 years ago. Even Europe and the United States together no longer have the hegemony they had 10 to 15 years ago.

We cannot continue with this stupid division between Europeans and Americans on issues such as data protection and copyright. This has to end and it ends very easily: with the awareness on the part of political and business leaders that this is not good for business, that is to say, that it has to be changed. But, unfortunately, the idea that together we do more than separately has not yet taken hold. And the most glaring example has become visible this week in Strasbourg, in the negotiations on the Artificial Intelligence Treaty, to which our American friends have come with an agenda that bears no resemblance to the agenda of the Europeans. They have been saying, for example, that the Artificial Intelligence Treaty would not apply to the private sector, and that cannot be. Europe and the United States cannot do that. Europe and the United States must come together, as democratic countries with trillion-euro trade ties that bind them, and speak with one voice. That much is obvious.

Another thing is that there are then political, ideological, etc. differences, as happens every day in the European Parliament, where there are different political parties, but, for the Artificial Intelligence dossier, they are a single European legislature. Therefore, I believe it is an awareness.

Regarding digital humanism, let me insist on it, because it seems a very abstract concept, but it is not. It is the basic principle, the foundation on which everything must be built. Today we are talking here about intellectual property rights and copyright, but tomorrow, if we talk about cybersecurity or trade policy, we will be back to the same thing. When it comes to trade policy, Europe cannot even consider compromising on the social protection of workers. It cannot. In order to compete with other areas of the world, Europe cannot consider reducing the rights of our workers. It cannot. That is no way to progress.

Therefore, I believe that we will have to insist, insist and insist until this awareness permeates the political class and we begin to see concrete achievements.

Question 2

Thank you very much, I found this humanistic vision very interesting, which I share completely. I also share the idea that in Europe we must participate in the market of artificial intelligence developments, create our own models. But I understand that combining this commitment with this humanist vision, with our own principles and rules, which is how we should do it, because it is our legal framework, makes it really difficult to compete. Do you really believe that it is possible to compete in this market with rules adopted from a European point of view, from a humanistic point of view, from an ethical point of view? I see it as difficult, although desirable.

Leonardo Cervera: I am going to use a historical comparison that I have already told many times, so if some of you have already heard it, I apologize, but I think it gives the key.

I love the story. I think we can learn a lot from history.

That Europe loses competitiveness with digital humanism is a fallacy and I will prove it: in 1815, the two most powerful armies on the face of the earth at that time met on the battlefield of Waterloo. Napoleon Bonaparte and General Wellington confront each other. Who won? General Wellington. Who had more cannons? Who had more soldiers? Who was the better general? Napoleon Bonaparte.

Why did Napoleon Bonaparte lose the battle of Waterloo? Because Wellington chose the battlefield. Wellington, who was a very intelligent man and also spoke very good Spanish, although he never wanted to admit it because he was ashamed, had spent months before the battle of Waterloo touring all the possible battlefields in Belgium, because he knew that the decisive battle was going to be fought there and he already had several locations in mind. When he saw the type of army that Napoleon brought, he positioned himself at Waterloo because he knew that, on that battlefield, with the orographic layout, with the type of terrain, he would win the battle and he won it: because he chose the battlefield.

We Europeans have to choose our battlefield, the one that makes us strong, the

one that matches our values and, when others come to our battlefield, we will have a competitive advantage over them. I have seen this same thing in the data protection world. When the Chinese come to talk about data protection, they do not even know where to start. The same is true in this area of AI.

Where does our strength lie? In holding on to our convictions: choosing our Waterloo. We are not going to go to Napoleon's battlefield, let Napoleon come to our battlefield, and I think we will have a chance there. Therefore, far from being a competitive disadvantage, this helps the competitiveness of our companies and makes us better people. Therefore, a double win.

Roundtable: Legislative trends in Europe and Spain

Speakers:

Ibán García del Blanco

International Affairs Director LASKER. Member of the European Parliament 2019-2024

Lara Chaguaceda Bermúdez

Deputy General Director of Intellectual Property of the Ministry of Culture

Cristina Perpiñá-Robert Navarro

CEO of SGAE (Sociedad General de Autores y Editores [Spanish Society of Authors and Publishers])

Moderated by:

Merdeces del Palacio Tascón

Civil Administrator, expert in Cultural Law

Mercedes del Palacio: Good morning, everyone. We are going to start the last roundtable of this very interesting Congress on Artificial Intelligence, Creation and Copyright organized by the Instituto Autor (Intellectual Property Institute) in collaboration with the SGAE. Many thanks to the Instituto Autor for organizing this event at such a crucial time, which coincided with the vote in the European Parliament on the Regulation on artificial intelligence. It seems like you have a crystal ball. In the coming weeks, the Regulation will also have to be adopted by the Council.

And I have the privilege of sharing this roundtable with great friends who are big defenders of copyright.

First of all, Ibán García del Blanco, who has preceded us on the podium, has referred to you, brilliantly and correctly, because you have played a leading role in the European Parliament, in the processing and discussion of this Regulation, as vice-chair of the Juri Committee. Also in the field of culture, as a member of the Culture Committee, and there is more, because he has also been a senator and sec-

retary of culture of the Federal Executive of the Spanish Socialist Worker's Party (PSOE). Moreover, I would like to reveal a detail of his biography: he is a great chess player, there is no room for false modesty here, runner-up in the World University Chess Championship with the Spanish team in 1996 and few can say that.

Lara Chaguaceda, Deputy Director General of Intellectual Property at the Ministry of Culture is also here with us, her youthful looks bely her outstanding professionalism and the best thing that can be said about her is that whoever knows her loves her, personally and professionally.

And finally, Cristina Perpiñá-Robert, whom you all know, CEO of the SGAE who, also, despite her frankly insulting youthfulness, has been defending copyright for many years, currently as CEO of the SGAE and, previously, as Director of Legal and Institutional Services of the International Confederation of Societies of Authors and Composers (CISAC) and even before that, Director of SGAE's Legal Services, which gives you an idea of her deep knowledge of copyright.

So, with these colleagues and friends, we are going to proceed to this roundtable, which wants to address a prognosis, what may be the possible legal prospects of a future or possible legislative body regulating the impact of artificial intelligence on copyright.

We are going to start this roundtable by asking Ibán, who has been, as you know, one of the main actors in the European Parliament as co-legislature, and I would like you to tell us which are the elements of the Regulation that have the most direct impact on the field of copyright. I would also like you, as far as possible, to tell us the ins and outs of the very long and hard negotiation that, I can imagine, has culminated in the agreement reached under the Spanish presidency of the EU Council and that has taken almost three months to reach the vote in the European Parliament today. So, Ibán, please, the floor is yours. Thank you.

Ibán García del Blanco: Thank you very much, Mercedes. Of course thank you very much to the Instituto Autor for the invitation. And thank you, especially, for the number of compliments I have received this morning. I am not used to it. I am a Spanish politician, we are not used to it. I do not even know how to handle them. In any case, thank you very much, this is more than the Casa de las Alhajas (House of Jewels), it is the "Casa de los Halagos (House of Flattery)" as of today.

This Congress not only gives me the opportunity today to share this table with people whom I respect intellectually, but it has also allowed me to see Leonardo, whom I agree with regarding everything he has stated here and even more: at the end of his talk, he pointed out, only superficially, that he is passionate about history and I can attest that this is the case and I highly recommend, it is also freely available to everyone, a podcast he hosts on the European Union, better than any treatise on the European Union. So look for it, it is in a series of programs called HistoCast[1], which provides many hours of enjoyable listening and learning.

Regarding your questions, Mercedes, in order to explain very general features without going on too long, because there are several of us

[1] https://www.histocast.com

and there must be time for questions, I would like to say, first of all, that the process that has brought us this Regulation has taken, technically, around three years, but it has actually been a much longer process. I would even say that it began before this legislature, it began with the vision that it was possible and, in that sense, we could almost say that we were visionaries in terms of the importance that artificial intelligence was going to gain, that the European Union should approach this issue, should conduct an in-depth analysis and, therefore, a **white paper** was commissioned, with more than 100 experts participating, who completed their work in 2018 and whose guidelines have been continued afterwards.

The European Parliament, in 2019 began working on a proposal, the **world's first legislative proposal,** on ethics applied to artificial intelligence, for which I was drafter in the Legal Affairs Committee. Subsequently, and for more than two years, reflections and studies have been carried out, maintaining a permanent dialogue not only with the technology sector, but also, I would say, with all the citizen sectors in the broadest terms, in order to redefine these guidelines, the strategy, and also to gauge the interests at stake and, therefore, to seek appropriate solutions. And, indeed, the Committee finally presented a proposal for a comprehensive law, a regulation on artificial intelligence, which the Parliament has been discussing for more than two years, culminating in the vote on Wednesday of this week in Strasbourg on the complete and already translated text.

Why did so many months pass between the first approval and this latest text? Because we must bear in mind that the European Union is complex in its functioning. One of the complex issues is that we have 24 official languages and that legal texts, and those of us who work in law are aware of the difficulty on many occasions of finding the best term, the most precise terminology, have to make sense in 24 languages. This is a very complicated process.

I was particularly interested in the translation of the final text of the regulation because due to the prevailing language of technological developments, the regulation has been dealt with mainly in English. For this reason, some concepts were often an arcane concept for me as to how they could be translated into Spanish, terms such as sandboxes or *deepfakes*, and I must say that the translation of some of them is especially appropriate: I especially like the Spanish translation of *deepfakes* which is "*ultrafalsificaciones*".

After approval by the European Parliament, it remains to be ratified by COREPER, which will probably introduce some last-minute linguistic revisions, which the Parliament will incorporate or approve internally.

This law, as is well known, approaches the phenomenon of artificial intelligence from the perspective of use, trying not to become obsolete with technological developments, but looking at which spaces, which areas deserve special protection, starting with fundamental rights, as Leonardo rightly stated, with the rights contained in The Charter of Fundamental Rights of the European Union[2] and continuing with some collective principles that are essential. The regulation gives a treatment to the reality

[2] https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex%3A12016P%2FTXT

it regulates based on the level of risk of the different uses to which artificial intelligence can be applied, from those considered **unacceptable risks,** which are defined in the law and for which, in some cases, some very specific exceptions are contemplated under very safe conditions.

There is a whole series of uses or areas of use that are always considered **high-risk** and therefore require a particularly rigorous policy of good data processing, an analysis of possible risks and measures to be taken, permanent monitoring of these technologies throughout their useful life or even the famous *stop* button, which means that, in the end, there must always be a human being who can stop the process, click *stop*, in the event that there is a problem.

These are mainly technologies that operate in sensitive areas such as healthcare, education, justice or in highly regulated areas such as finance, banking, etc. Subsequently, the law deals with certain areas that require special transparency, and here we come to the heart of the matter.

With respect to what has been known or is known as generative artificial intelligence or general purpose models, the law proposes an additional supervision that has to do with the obligation of **transparency** on the data that have been used for the training of each one of the models, so that the rightsholder or holders can plausibly, in an adequate, possible way, find out for themselves whether their works have been used as data in the training of the models and, therefore, know whether they are entitled to a possible compensation or, if necessary, even propose the stoppage of the use; This power should be exercisable *ex ante*, but, in any case, this right is recognized.

Here I want to make a caveat, because I receive many questions regarding how this law protects copyright. In itself, the law does not protect it, because there is already a specific regulation that protects it, as Directive 2019/790 on copyright and related rights in the digital single market and the transpositions to national legislations, as well as the legislations of each State have not failed to act at any time. Another thing is that the rightsholders, in many cases, have not been aware that their data were being used for the training of these models, which should not mean that this is going to be free and let bygones be bygones. This is a completely different matter.

And, with respect to products generated through the use of generative or general purpose technology, the regulation also establishes the obligation of transparency in their products, that is, they must label products made with tools such as *ChatGPT* or *Gemini*, which, like those "deepfakes" I was talking about, somehow imitate works created by human beings or that even reproduce people's voices. Later we will also discuss issues of impersonation and the right to one's own image, but let us first address the intellectual property aspects.

Thus, at a minimum, the law sets forth obligations related to transparency. And I would go further: it distinguishes between general-purpose models that can generate systemic risk because of their power, and this is important: these models are also required to have some additional specifications, for example, to be included in a registry, and models that do not pose such a risk.

Furthermore, it is important to take into account the governance issues addressed by the regulation. Earlier Leonardo referred

to the creation, on January 24, 2024, of the European AI Office[3], which is in charge of managing this registry of general purpose models, as well as developing and publishing codes of good practice[4], guidelines[5] and directives for compliance with these transparency exercises.

And, having said all this, now talking about the future, what we need to do is to start thinking about how we are going to effectively apply many of the provisions contained in the law.

As Leonardo stated before, it is true that the law has its own characteristics, it is a declaration of principles and sets forth some general principles, some general provisions that must be complied with, although it is far from specifying exactly how. In fact, it is not for nothing that the European Commission will now have to carry out more than 20 acts implementing the law, one of which will be the responsibility of the AI Office: to determine how all the obligations related to transparency in intellectual property matters are to be fulfilled.

So the work that lies ahead is almost as important as what we have done so far. In this sense, and addressing the specially qualified audience that this Congress attracts, I would say that now it is time to pay close attention to the development of the law and to the institutions that are mandated to administer it, taking into account that, regarding the other aspects, in general, the law foresees it being enforced at a national level, that is to say, that each State Agency of Artificial Intelligence will be the one to develop them. For now, I will interrupt my presentation here, because I do not want to say much more and we can continue talking.

Mercedes del Palacio: Thank you very much, Ibán. We are going to give the floor to Cristina Perpiñá-Robert, whom I would like to ask what the point of view is or, more than that, the feeling of authors, creators and rightsholders in general regarding artificial intelligence and, if you can differentiate between them, what is their approach to this subject.

Cristina Perpiñá-Robert: The *Goldmedia* study presented to us this morning is precisely about this, but first, I would like to point out that artificial intelligence has been used by authors in music and audiovisual for decades. This is not new, it is something that nobody doubts and, with a special level of intensity, in the fields of electronic music, library music..., more so than in other genres, such as flamenco where it is likely artificial intelligence is used less frequently.

These uses have never been a problem, that is to say, for many years now artificial intelligence has been used: authors have coexisted with it, have benefited from it and have used artificial intelligence to write, create, compose, mix, record... For everything. The problem arises, as we have seen, in recent years, when the level of sophistication of the models has made a qualitative leap, to the point that the authors begin to fear that artificial intelligence will no longer assist them, but may even replace them. And, at this point, all the alarm bells ring.

[3] https://digital-strategy.ec.europa.eu/en/policies/ai-office

[4] https://digital-strategy.ec.europa.eu/en/policies/contents-code-gpai

[5] https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-ai-system-definition-facilitate-first-ai-acts-rules-application

It has been seen today in the *Goldmedia* study presentation, which we want to carry out on the Spanish market and the authors of music, audiovisual and important rights, whose rights are managed by the SGAE to know the impact that this new AI can have in Spain, as well as the perception that the authors have, and check if our results coincide with the figures of the studies conducted in other countries[6].

Logically, there is a concern in SGAE, as there is in all collecting societies and by all rightsholders, who check not only the effects of all the uses and aspects considered in the new European Regulation on AI that Ibán explains to us, but also those contemplated by the Report also approved by the European Parliament, by overwhelming majority, on January 17, 2024 on "Cultural diversity and conditions for authors in the European music streaming market"[7], which recognizes the need to protect and remunerate authors for the use of their works on streaming platforms.

Even before generative artificial intelligence, there was a huge concern on the part of authors because, with the prevailing digital business models, they could not make a living from their works. Such a massive use of works is taking place, such is the amount of works being generated and the speed with which they are published, that the remuneration paid by the platforms has to be divided among so many rightsholders that very few can really make a living from the performance of their works and are forced to play more concerts or even to abandon music and dedicate themselves to other types of work, because their dedication to music or audiovisuals is not enough.

If we add to this situation everything that artificial intelligence now allows and this **effect of substitution** of creators by machines, unfortunately, the figures we have seen this morning of 70% of musicians and composers in France and Germany, worried and in a state of alarm, in the case of Spain and, therefore, in the case of the SGAE, it is much more serious, due to the particularities of the Spanish market. Here, music streaming platforms mostly follow advertising-based models, which we know are not sustainable, because they find it much more difficult than in other markets for users to switch to subscription models; if Spanish listeners do not have to pay they are more accustomed to and show high tolerance for listening to music with advertising interruptions, so the conversion rate of users from platforms in the advertising-funded model to the subscription model is very low in Spain compared to other countries. This situation makes our authors much more vulnerable, especially because here there is little or no social condemnation to piracy, it is commonplace, to the feeling of being free, to which now, on top of that, we add the fact that there will be much more music generated by artificial intelligence, especially in the field, I can venture, of electronic music, advertising music, bookstore music, videogame music, etc. Authors in all those fields, who use technologies much more, are probably going to lose their jobs and will not be able to make a living from this.

[6] On September 10, 2025, the General Society of Authors and Editors (SGAE), through Know Media and in collaboration with the Carlos III University of Madrid, published the "The economic and social impact of artificial intelligence on music creation and its effects in other cultural fields." https://documentos-sgae.s3.eu-west-1.amazonaws.com/2025/WEB/ESTUDIO+IA+EN+LA+M%C3%9ASICA+DE+SGAE/AI+SGAE+(EXECUTIVE+SUMMARY+OF+THE+STUDY).pdf

[7] https://www.europarl.europa.eu/doceo/document/TA-9-2024-0020_EN.pdf

Therefore, the approval now of the Regulation, together with Directive 2019/790, opens up the possibility, which we will have to discuss with the Government, of studying the best way to implement this regulation and what solutions must be found in Spain so that its creators can continue to have a livelihood or, at least, obtain greater remuneration, greater remuneration for the creation of their works because, if not, we will have less and less Spanish music and this will be harmful to **cultural diversity.**

Mercedes del Palacio: We are now going to ask Lara. What is the state of reflection on artificial intelligence and copyright in the field of the Administration and, more specifically, in the field of the Ministry of Culture? We are not going to ask you to give us a solution, but simply to tell us what the state of the art is.

Lara Chaguaceda: Good morning. Thank you very much, Mercedes. If I may, I would like to congratulate the SGAE on its anniversary and thank the Instituto de Autor and the Fundación SGAE (SGAE Foundation) and, in particular, Marisa Castelo, for organizing this Congress. Thank you for inviting me. It is an honor to be here, and a pleasure, because it has been very interesting. After the other top level speakers, my answer is going to be complicated.

The Government and the Administration are working on artificial intelligence issues in a multifaceted and transversal manner and, at the same time, in a sectorial manner. There is a National Artificial Intelligence Strategy[8], which contemplates different axes, framed, in turn, within the Spanish digitalization agenda for 2026 the Digital Agenda Spain 2026[9], which will continue to progress towards the future, and which comprises strategic axes, transversal axes and a series of plans and strategies, among which is the creation of a National Agency for Artificial Intelligence Oversight.[10].

One of the fundamental pillars, and more related to the cultural and creative industries, is to promote the projection of the Spanish language, and this has been expressed by the President of the Government himself at the *Mobile Congress*, where he announced that, in Spain, we are working on the creation of a **foundational model of language trained in Spanish,** and this is in line with what Leonardo warned before, in the sense of not missing the train or the opportunity to be among those who create and take advantage of artificial intelligence, in order to also guarantee linguistic and cultural diversity.

Also recently approved is Royal Decree 817/2023, of November 8, which establishes a controlled test environment for testing compliance with the proposed Regulation of the European Parliament and of the Council establishing harmonized regulations for artificial intelligence[11], that is, it regulates what will be the controlled test environment, sandboxing, to test the results of the application of the regulations, at the moment European, of artificial intelligence to the specific projects that can be developed both from the public sector and from the private sector in Spain.

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[8] https://digital.gob.es/content/dam/portal-mtdfp/DigitalizacionIA/Estrategia_IA_2024.pdf

[9] https://espanadigital.gob.es/

[10] https://administracionelectronica.gob.es/pae_Home/pae_Actualidad/pae_Noticias/2024/Junio/noticia-2024-06-20-Presentada-Agencia-Espanola-Supervision-IA.html

[11] https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-22767

From the sectoral point of view, various ministries are working in the areas that affect them. For example, the Ministry of Labor is probably working on the education and training of workers, on their acquisition of new skills, which is called upskilling or reskilling, so that they can be employed in leading sectors.

The Ministry of Culture is also working along several lines. The first one that has been addressed has consisted of a guide of good practices related to the use of artificial intelligence[12], which some have deemed very positive and others have considered insufficient, but which is still the first step to building something bigger and to internally reflect on how the Ministry of Culture itself can address the challenges posed by artificial intelligence when, for example, to grant subsidies, contracting, etc.

Just as yesterday, the Intellectual Property Registry told us about the challenges that arise when registering a work created totally or partially with artificial intelligence or by artificial intelligence, from the point of view of intellectual property rights, with respect to grants, awards, contracting, etc., we were also presented with the dilemma not only legal, but even ethical, moral within our concept of the system, of whether to award or grant subsidies to projects or creations made solely with artificial intelligence.

In the Ministry of Culture, it has been considered that no: that the right to creation belongs to creators, to human beings, and that, this being a greater good to be protected, we should, therefore, establish some lines of work, some good practices to avoid the situation that creations made directly by machines could receive awards or subsidies.

From another point of view, we are in the process of analyzing, of course, the European Regulation, because we understand that, at some point, there will probably be a greater sectorial development of this regulation, but, perhaps also, at some point, it will be necessary to make some adjustments to the regulation at a national level. And, in any case, to be able to understand how to apply this regulation that we already have in place.

All regulations, all intellectual property regulations and, in particular, what I consider to be the seed, voluntarily or involuntarily, of the regulations on artificial intelligence and intellectual property, which are Articles 3 and 4 of Directive 2019/790 on the digital single market, relating to that limit or exception with respect to text and data mining, either for the research field or for the commercial field and which, *a priori*, seemed relatively simple, have been overtaken by the development of technology, so that the application of those articles has become much more complex.

Because although we are all in favor of promoting research and the development of research in that sense, right now it is also complex to establish the limits between that which is only research without commercial purpose and that which could eventually have it later, insofar as any research, in the end, has a purpose then to be transferred to society and contribute to growth in some way and, on the other hand, we have to study how rightsholders can carry out this **opt-out** to make it possible and effective, and we are working on this at a very technical level, together with colleagues from the Ministry of Digital Transformation and the Civil Service, in the scope of their PERTE (Proyecto Estratégi-

[12] https://www.cultura.gob.es/actualidad/2024/02/240219-inteligencia-artificial.html

co para la Recuperación y Transformación Económica [Strategic Project for Economic Recovery and Transformation]) project of the New Language Economy[13], which has a lot to do with text and data mining and using the Spanish language and model training.

Mercedes del Palacio: Thank you very much, Lara. I now propose to move on to a second phase of prognosis that looks at where we can go, on the understanding that, as Leonardo referred to earlier, we want to talk about artificial intelligence with a humanist approach, based on fundamental rights and, in this regard, we must remember that the Charter of Fundamental Rights of the European Union[14], in its Article 17, expressly mentions intellectual property. Intellectual property is therefore one of the fundamental rights of the European corpus, on the same level as any other right enshrined in the Charter.

And, without further ado, I will give the floor to Ibán to tell us, because he has been waiting in the wings, how the internal negotiation strategy has been within the European Parliament and with the Council that has led to the vote on the new AI regulation.

As you know, in the legislative process in the European Union, the initiative is taken by the Commission and, once adopted, there are two co-legislatures who, in the first stage, work in parallel: the Council, which brings together the Member States, on the one hand, and, on the other, the European Parliament, where our representatives, elected by suffrage, are located. Once separate agreements are reached in both institutions, we move on to the phase to reach a joint agreement, which is the famous trilogue phase, if I am not mistaken.

Having made this brief parenthesis, please, Ibán, tell us about this process and also tell us where you think this new regulation should go in the future.

Ibán García del Blanco: As regards copyright protection regulations and how they interact with this new technological reality, we must bear in mind that, when Directive 2019/790 was approved and published, *ChatGPT* did not exist, so it was difficult for the legislature at that time to foresee this reality.

From a teleological and historical interpretation, it seems very clear to me that this **text and data mining exception** does not cover unauthorized mass scraping to train AI models. However, I understand that this statement may be controversial and merits some clarification. Earlier, over coffee and brainstorming with Leonardo, we pointed out that perhaps it could even be the European AI Office that could clarify some issues related to the interpretation of this regulation or even more boldly the European Commission could be asked to make a current interpretation of the Directive.

What I would not do in any case, and it has been the subject of discussion in other forums, is to open again "in channel" the Copyright Directive 2019/790. Among other things, because there are always people waiting in the wings to reopen the debate on everything contained in the regulation, and not to stick to a very specific question or

[13] https://planderecuperacion.gob.es/como-acceder-a-los-fondos/pertes/perte-nueva-economia-de-la-lengua

[14] https://eur-lex.europa.eu/ES/legal-content/summary/charter-of-fundamental-rights-of-the-european-union.html

clarification. I would not reopen that can of worms because I think it is well closed as it is.

Or, perhaps, as Lara pointed out, it could be solved with a **regulatory modification at the national level** that clarifies the issue. For example, Poland, which, by the way, has suffered the most in the transposition of the Directive, has nevertheless taken the opportunity to make it clear that this exception does not cover the training of AI models, that is, it is the only EU Member State that has incorporated this mention in its legislation: that it does not cover the training of artificial intelligence models.

Having said that, I will move on to the gossip section.

Earlier, I spoke a little on how the negotiation had gone formally, but I would stop, above all, at the moment when the foundational artificial intelligence models emerge, in order to explain a paradox that occurs at the end of the negotiation. At that time, France is chairing the EU Council, holds the rotating presidency of the Council of the European Union and reacts to a different requirement than the one that was finally given: at that time, when the text is already being discussed within the European Parliament, once the Commission's proposal was presented, which did not reflect the possibility of regulating these models, among other things, because it was thought that they would arrive, at the earliest, in 5 or 6 years. This is what all the technologists were telling us; only the developers of these models knew that their irruption was imminent.

By this, I mean, also thinking about how we have to look forward to the future to come, that often what seems far away may be with us much sooner than we expected. So, at that time, France conveyed to the European Parliament that all AI foundational models should be included in the high-risk category, that is, that the greatest possible number of provisions and controls should be imposed on them. I will add here: a country like Italy, which I will discuss later, temporarily prohibits the use of the models and, meanwhile, the European Parliament is considering how to incorporate this earthquake into our scheme under the legislative technique.

It was done, finally, by inserting the guarantees that it decided to require for the developments that were of most concern, with **exceptional transparency obligations** with some opposing viewpoints, I must say, within the Parliament, because there were groups in the Parliament that advocated that there should be no provision whatsoever with respect to this issue. Fortunately, it was possible to achieve this, even with the support, at that time, of Members of the European Parliament who, at the end of the process, withdrew their support. I will address this issue later.

Thus, the Parliament proposes these additional obligations to those models that are understood to fall under the heading of "creators of systemic risks due to their potency". This is not an indeterminate legal concept, but is defined in the DSA, the Digital Services Act[15], that is, what is a systemic risk is not interpretable. And I say that, when we reached the end of the negotiation, one of the last issues on the table was precisely the treatment of the foundational models, together with the prohibitions and something else.

[15] Regulation - 2022/2065 - EN - EUR-Lex: Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation).

And, at that time, we found the culmination of the paradox I was talking about before: suddenly, some Member States, France, Germany and Italy, led by France, were proposing that no obligation of any kind should be imposed for foundational models, coinciding with the fact that some national companies are developing foundational models. Germany, until then, had not participated in this controversy, but France and Italy, who had been the most active in demanding the most restrictive controls, who had practically asked to put developers in jail, were suddenly the ones saying that, on the contrary, they should be given medals and no obligations.

So we find, as a colleague who was very vocal in the defense of copyrights stated, that all of a sudden their legs are starting to shake.

In the end, the initiative to incorporate controls went ahead, fortunately, thanks to two factors due to the action of the Spanish presidency, which was particularly active in defending the inclusion of these types of provisions not only in the negotiations within the trilogue, but was also decisive within the Council, leading to an agreement in COREPER, without France and Germany. This is one of the recent developments in the functioning of the European Union, because it was not the last time that, in the end, an agreement was reached in COREPER, without France and Germany, which is saying a lot.

And, speaking of issues to take into account **for the future,** as I stated at the beginning, perhaps we will have to look for some kind of solution, if not at European level, perhaps at national level and, in any case, take into account that, technologically, it is sometimes complicated to carry out some of the solutions that are proposed, that is, we will have to think with an open mind how to ensure that it is possible to comply with the payment of a **fair remuneration** for the use of data derived from original works, when we are talking about the processing of millions and millions and millions [sic].

I do not have the solution, but, in any case, what is clear to me is that we will have to start keeping an open mind about possible solutions, because this is complex, but even so, I cannot shy away.

Earlier I heard a question regarding the divergence between the United States and Europe on artificial intelligence regulation. As Leonardo says, I think there is a difference that gives Europe an added value and that will give added value to European companies and I want to add: I think it will lead those who do not have provisions on intellectual property to rectify, because otherwise they are going to find themselves caught up in a sort of permanent whirlwind of court cases. In Europe, thanks to our regulations, these cases are probably solvable and, above all, they encourage all stakeholders to reach an agreement, which is something that the European AI Office should now also be asked to do: to bring together rightsholders and users in order to reach a sort of collective agreement or some other system.

And, additionally, if there is one thing that President Biden's October 2023 executive order[16] is particularly stringent on, it is intellectual property. I would like to say that, just as it is true, in short, that "for the Americans, there is no need to introduce regulations for the private sector, and for the Chinese, for the

[16] Revoked by President Trump on January 23, 2025: https://www.whitehouse.gov/presidential-ac-

public", in intellectual property matters, the U.S. approach is, in some cases, even more ambitious than that of the European Artificial Intelligence Act. Therefore, I believe that there is enough room to reach a final agreement between these two world regions.

Mercedes del Palacio: Thank you very much, Ibán. We have not yet entered into the tempestuous realm of what a future regulation should be or should look like, and I fully understand this: I would not dare either. Even so, you have pointed out something and, in any case, it is true that this famous "soft power" of the European Union has so far worked in many areas and has even been studied in doctoral theses, so I think this will also be a success story of that soft power.

I would like to ask Cristina what the current strategy for the immediate future is, because in June we have European Parliament elections, in autumn there will be a new Commission and it is not too risky to think that perhaps the new Commission has in its portfolio the idea of undertaking some development in the field of intellectual property. Is this something you consider desirable? What are you ready for? What are you seeking allies for? Tell us about it.

Cristina Perpiñá-Robert: I would like to add something in relation to the lobbying phases and the advocacy effort that we made from SGAE, as well as from the European societies, during the development of the Copyright Directive 2019/790. Then, all the entities representing rightsholders focused entirely on Article 17 to ensure that a **right of public communication on social media** and others was recognized and, Mercedes was one of the people who supported us the most in this endeavor.

We also focused in Article 18 on the establishment of **adequate and proportionate remuneration.** That is to say, in which all those obligations in relation to copyright were established. We never looked at Article 4 which, at the time, we understood did not affect us that much. It referred to activities for scientific research purposes. Eventually, we saw that we missed an opportunity because it is the focus of the whole artificial intelligence debate.

It has already been stated that this was not a use that was foreseen at the time, that this provision was not intended for AI, but it was a stroke of luck as we all looked at Article 17 without realizing that it was on this limitation or exception in Article 4 that the whole debate would later focus.

So what are collecting societies in Europe doing? I think they have been lobbying very well throughout the whole AI Regulation development and Ibán knows that well.

Initially, the text of the Regulation did not even contemplate intellectual property rights. As much as they are a fundamental right, they did not even appear. Now yes, and they will have to be linked to Article 4 of Directive 2019/790, while introducing those transparency obligations that are essential to enforce the rights we are fighting for.

What we are doing now at the European level is monitoring how this template to be developed by the European Artificial Intelligence Office is going to be defined, because the degree of detail that the template establishes with respect to this summary of the works and data that may have been used in the development of artificial intelligence models is

tions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/

the key to know how we will be able to license these uses. The more exhaustive this information is, the better the chances of being able to identify the works and then, the easier or more difficult it will be to distribute the remuneration to the owners on the basis of this information.

European collecting societies, through GESAC[17], have already started to collaborate with the European Office to develop a text that serves these purposes, because if we have a template that does not require sufficient information, no one will be able to exercise their rights[18].

This is a fundamental aspect and, behind it, we are in search of **solutions both nationally and internationally.** Societies are also working on developing an **opt-out model** that we can start using immediately. We know that many times, for the training of these tools or artificial intelligence models, music and social media platforms are being used to obtain the information and the works they need for data mining and for this whole learning process, so what we are doing, and some collecting societies are already applying it, is to offer a **model of reservation of rights,** so that when you license a platform to use protected works or performances, it is clear that you are not allowed to use them for AI purposes, that is, you license the works for reproduction and public communication on the platforms, but you are not allowed to use those works for data mining, pursuant to Article 4 of the Directive.

In this way, the reservation of the artificial intelligence rights is expressly made, so that we can at least consider the possibility of studying now how they **should be licensed,** which is the second part. And all this knowing that the AI models have already used all the acquis created to date, which is another problem, but, in the meantime, in this way, we protect all the new works that are being published.

This is the work we are carrying out, shall we say, at the European level.

In Spain, I believe that we now have the opportunity to clarify precisely these issues in relation to the limitation if this opt-out has not been made or, as already mentioned, if the creators, without knowing it, have authorized the use of their works for artificial intelligence by accepting the terms and conditions that appear in many of these services. We must start now to clarify the certain ambiguity that still exists in the AI Regulation and in Directive 2019/790 and make it clear that, if a limitation applies because the opt-out right has not been exercised and falls within the exception or limitation of the Directive, in that case, there must be **remuneration** in return.

It is clear and today, with the presentation of the *Goldmedia* study, it has become evident that tremendous damage is being done, regardless of whether we are discussing whether this limitation or exception complies with the three-step rule, which is clearly not being complied with and it is enough to see the millions of dollars in damages that have already been caused to rightsholders.

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[17] European Grouping of Societies of Authors and Composers. https://authorsocieties.eu/

[18] https://authorsocieties.eu/content/uploads/2025/07/joint-statement-ai-act-implementation-package-30-july-2025-.pdf

Therefore, I believe that the time has come for a debate.

It seems that it should not even be considered an exception, not because it does not comply with the three-step rule, but because that music, all those works, have already been massively used by AI development. It is almost a mass piracy of all those works that have been used without authorization, so at least a remuneration right has to be established in return and that remuneration right seems to fit into something similar to the private copying system, which collecting societies are very used to licensing.

How will it be distributed? Well, as many rights that have been managed for decades by collecting societies are distributed. We do not need to know what music is playing in each bar to have a **distribution system** based on polls, analogies, etc., which allows distribution to all holders. This has never been a problem, just as we have systems for sharing remuneration for private copying, so that collecting societies know exactly what to do.

However, in relation to the level of identification available to us and resulting from the **transparency obligations** established by the AI Regulation, which should allow us to know the works to be used, it is clear that there is a **reproduction right** at stake and, therefore, these uses must be licensed. I believe that Spanish law could clarify this point, although the Intellectual Property Law is already broad enough in the definition of the right of reproduction to make this clear, although, if it is added, so much the better. It should be made explicit that an express authorization is required for the use of works for AI purposes and, in that case, even if they are exclusive rights, the collecting societies, at least in the SGAE, have been licensing exclusive rights on a massive scale for decades, so that, once again, it is not necessary to reduce it to a remuneration right but it is possible to assert it as an **exclusive right** that can be licensed through the collecting societies and whose distribution system will be analogous to the one we use for other exclusive rights, in the same way that we have long been granting **pan-European licenses,** which oblige us to identify the uses of our repertoire accurately and in detail, work by work, even in the case of platforms that use millions of works, because technology already allows us to rigorously identify the uses of our works and to distribute the remuneration collected to their owners.

I believe, then, that these principles, which collecting societies have been using for years, make it evident that we are organizations perfectly qualified to perform this type of licensing, and for what can no longer be licensed because it has already been used? The author will have to be remunerated with a remuneration right.

Because, in addition, a fundamental consideration that we must take into account, and that forces us to separate ourselves from the right of remuneration, is that there may be authors who do not want their works to be used for the development of this type of model. It is not, therefore, a matter of recompense, which is important, and remuneration: it is a matter of **consent and moral right.** Creators and artists should have an exclusive right that entitles them to authorize or not the use of their works and performances in the development of certain models. We have already given numerous examples in the presentations at this Congress. It seems fair to recognize a right that must be respected, because the author may

not want his works to be used for this and has every right to prohibit it.

Mercedes del Palacio: Thank you very much, Cristina. You have indicated to us which way the regulation should go, without departing from the traditional copyright model and, as you referred to the exception for data mining with commercial use contained in Article 4 of the Directive on copyright in the Digital Single Market, and I was there, allow me a few minutes to explain what happened.

In the text of the initiative presented by the Commission, there was an exception for text and data mining for scientific use. And during negotiations in the Council, which were very long, one day the Netherlands colleague arrived and, without warning, put this new exception on the table. The only Member State that objected was Spain. It was not so much because I was there, but because we did not feel that that was the right ways to present an issue so that we could sense, from the very first moment, that it could have a significant impact.

The explanation they gave was as light as that the assumptions covered by this new exception were what, for example, *Google* or any search engine was already doing when it examines each IP and identifies what each user, without identifying them personally, but through their IP, looks at and searches the network, in order to adapt the search engine's offer to the user's profile. That did not sound good to us and the Spanish representation was the only one that opposed it, with little success, as we have seen.

We have talked about the past, about the use that has been made of texts and data, and I do not know if it can be a reference and I have not seen it in the original texts of the regulations, but I have read that, in the transposition made by Germany and the Netherlands of the Directive, a **retroactive right** for interpreters, for 20 years, is contemplated. This is the first time I have seen it. It is a model. I will say no more.

Please, Lara, could you tell us what the role of Spain as a Member State could be, what position you think we could have in the face of a possible European regulation. Would we be in favor? Do we think we should wait? What is the position of the Ministry and of the Government, in general?

Lara Chaguaceda: I think it is difficult to do a foresight exercise without a concrete proposal on the table, but I believe that something has to be done. And it seems clear that this should not be done, that it would be useless to do it at the national level, because, with global technologies, we can only look for global solutions. That is why, of course, I believe that any solution must be based on a **European Union regulation.** This does not mean at all, and here I fully share Ibán's view, that the Digital Single Market Directive has to be refined again.

Articles 3 and 4 probably need to be refined; especially, at least Article 4, although also Article 3, because of what I have commented above, on the transfer of research results afterwards to the economy. Something should be done in this regard.

As for the artificial intelligence regulation, it undoubtedly provides us with a basis for transparency, which will have to be detailed through that template. Now, I understand that transparency is a good exercise, but for when the text and data mining operation has already taken place; the use, in this case, of protected works or services for model training.

This brings us to the situation that Cristina presented regarding everything that has already been used in the development of models. It is true that it is for the future, but, in reality, it will always be an exercise of the past, of transparency on the works used that will tell us what a model has already used, both the models that already exist and the models that will be created. And the problem is that, once it has already been used, it seems that the licensing system, of an exclusive right, does not make much sense, because it is no longer possible to go backwards and we have seen these days that there is no right to forget on the part of artificial intelligences, they are not capable of forgetting.

So, what am I learning? I was not coming with this position from the Ministry or from home, but I am concluding that, probably, the model that can make more sense is a **mixed model,** as Cristina proposed, in which the general rule in the future should be the exclusive right, **licensing,** because it is the general rule in our legal framework, but, at the same time, it is impossible to avoid the need to think of a solution for the past or for those situations in which there is a market failure and that licensing does not take place and, later, through the report detailing what has been used, it is discovered that there were works that have not been properly licensed. And there, probably, a **remuneration right** is a much more practical solution, to say the least.

Therefore, I believe that institutionally in Spain, we support the European Union taking a specific approach in the field of copyright and artificial intelligence, something that allows the protection of creation and its authors, that allows for the protection of rightsholders, without this meaning, of course, trying to stop technological development or the development of artificial intelligence.

And also always bearing in mind that the Spanish case, and we have seen this in other matters, is different from that of other Member States because we have an absolutely overwhelming asset, which is our language, Spanish, and a culture in that language that we must protect and promote and which, moreover, is a country brand and something we are proud of. So we must find some model or support a balanced model that takes into account, of course, the uses in the future; in some way, the uses of the past; or the uses that occur erroneously, but which, thanks to the transparency offered by the Regulation, we will be able to identify.

But also, at the same time, I believe that we must trust, this has less to do with regulation, but I do not want to stop saying that this technology can also serve us, from a copyright point of view, to do things better. Because it should also serve, for example, to identify cases of piracy and to **combat piracy.**

Convolutional neural network models and reverse engineering tools that allow us to eventually identify what has been used or what has probably been used or, at least, to which author what has been used seems to belong may allow us to fight piracy more effectively, and I do not know if this specifically needs a regulatory development or rather a technological development.

We must have, I believe, the mind and spirit set on that: on the confidence that technological development has tended to help us so far in evolution and in economic and social development and can still continue to do so.

Mercedes del Palacio: Thank you very much, Lara. We will now take some questions from the audience.

QUESTION SESSION

Question 1

I really want to congratulate you for the quality of the roundtable and all the topics you have dealt with. I have three questions. I will try to be specific.

As an observer of the upcoming and pioneering European regulation, I think we are coming from a time when we have regulated based on risk levels, high, medium and low, and the irruption of the general purpose foundational modules has caught us out completely across the board. I do not know if we are patching, taking advantage of the fact that we already have a corpus to subsume this into and if, really, it is the right thing to do, because that white *ChatGPT* screen: "What can I help with?" means absolutely everything. How can you price that level of risk when, really, the outcome can be a light opinion or can determine a lot of things? I get the feeling that we come from *deep learning* regulation, where applications are clearly priced in terms of life-threatening or non-life-threatening, and now we get this generative AI. My first question would be what the perception in Europe about this is and how are we going to find the middle ground.

The second is that you mentioned, I think you did too, Lara, foundational models for public administrations. Clearly, the reason, the opportunity and the timing are clear. The question is whether we made it in time. Assembling a foundational model, training it, *fine tuning* it, etc., at the speed the industry is moving, is it already too late? Are we going to be able to compete and deliver a solution of value to our citizenry or is there some sense that we may fall by the wayside? The bidding times are also long, the procurement processes, we are all familiar with them. I have this doubt because of the ferocious speed at which the industry is moving and, in particular, the American industry, which is not messing around, but is going for the jugular.

Regarding my third question, you were commenting on the importance of the moral rights of creators, of their right to prevent their works from being used for training purposes. Many creators face contracts with large production companies, large platforms, which oblige them not only to give their product, their creation, but also to give their source code, to give even the *micro-editing micro-assemblies*. I talk to colleagues who tell me that accessing is the only way to survive in the industry and, moreover, to be more efficient, but I think the perverse effect is generated that this way of working directly feeds all the algorithms that we have been talking about here and that we fear. To what extent are we responsible for the change in the industry and are we training the models with musical microdata, in this case, from the audiovisual world, so that, at some point, with the labels of the montages that you are already seeing on platforms, "drama", "sorrow"..., automatically generate that music and we become more dispensable? Is there not a certain perverse effect on the industry and certain obligations that are being imposed in contracts?

I wonder if the same thing happens in the cinematographic collective.

Forgive me if I have spoken at length, but I think these are interesting topics, and thank you very much.

Ibán García del Blanco: Indeed, the general purpose models or foundational models arose at a time when the European Commission had already presented the proposal for the Regulation, so that they are not reflected, that is they are a technological novelty that did not exist. And, of course, they revolutionize the situation to the point, to the degree that the only exception, really, that there is to the use, to the use criterion, is the additional regulation that is added on general purpose models.

Then, depending on the use made of these models, they could also fall under all the other headings of the law, including the high-risk chapter, and therefore additional requirements may apply to them.

Of course, the problem with this is that these models are born and characterized precisely because they can be used for everything and, therefore, it is difficult to frame them *a priori*. This is the reason for establishing additional obligations.

There are AI systems that are not high-risk in principle; however, because of their versatility, computational capacity and/or the volume of data with which they have been trained they can be adapted to perform a myriad of functions, potentially even high-risk practices. These systems are not considered strictly high-risk, but rather **systemic risk.**

It was very laborious to establish where the limit was beyond which a foundational model could generate systemic risk. For jurists who are not technologists, it is complicated to intuitively take some concepts on board, but the one that was finally used to distinguish the power was a concept of neuronal elaboration or of... I do not remember exactly what the index is..., but it so happened that, with the first agreement, *OpenAI* was already outside the scope of application of the systemic risk criterion, because it was more efficient than the rest of the models and, therefore, used less power to reach the same results, so that, in a few months, we would find ourselves with the paradox that the models that potentially entailed more risks would be those that escaped this criterion.

Therefore, an additional criterion was used. We failed to include the trade name of the models, of the engines we were looking at when establishing them, so that they would be included, in any case, in the systemic risk. Therefore, for these models, an additional control system, the need for registration, additional transparency obligations, information on good data governance, etc. are also foreseen.

Is this sufficient? We will see. Now, the hot potato is in the hands of the European Artificial Intelligence Office, which will have to develop the templates, for example, for transparency and determine some other issues.

On the other hand, with respect to the contractual clauses that are being expanded, we must know that there are extremes that, no matter how much they are subscribed in agreements between the parties, in our law, are not legal. Thus, as much as they are, unfortunately, becoming widespread, especially in the audiovisual world, and being exported to other environments, the so-called **buyout contracts,** that is, contracts whereby you assign all your rights, including those contained in the concept of moral rights of continental law, these agreements are ***void ab initio.***

Indeed, this is poor consolation for those who find themselves subjected to these

practices and see how their administrations are apparently doing nothing to protect their rights, but, in any case, it is important that we keep this in mind.

Recently, I participated in a roundtable held in Brussels, with the attendance of representatives of some large international companies, in which we talked about music and, at the end, there were some who commented that this void operated with respect to music, but not so in the audiovisual field, and I had to clarify that this *void ab initio* applies to any intellectual property right.

I have asked on more than one occasion and I have requested the European Commission to take note of these practices and to act once and for all, because let us imagine that international companies become generalized to refer to Thai labor law and impose that the labor contracts they sign with all their workers are subject to Thai law: working conditions, vacations, leaves, social rights, etc. and that there is no choice. This would probably be result in a storm, a major issue in the political debate.

These practices have been advancing behind the scenes until they have become generalized and, indeed, are of great concern. At the very least, we must know that these agreements are *void ab initio* and now, of course, we must enable a sort of collective response, because, precisely, individuals, one by one, are not in a position to defend their rights against large platforms. This is one of the major pending issues for the next term.

Elections to the European Parliament are coming up soon, on June 9 in Spain and from June 6 to 9 in other countries. We have to see how we include these issues in the political agenda of the political parties running in the elections.

Cristina Perpiñá-Robert: I would like to add, in relation to this buyout issue, that one of the actions that we collecting societies have carried out has been a **campaign to raise awareness** among authors, who were often unaware that the obligation to assign all their rights is illegal or they feared that they would be blacklisted if they refused to do so. This is another area in which **collective rights management** proves its usefulness because it defends authors against this type of practice and is capable, at the very least, of preventing the author from having to face their own publisher or producer.

There are cases that are not exactly buyout, but in which **submission to foreign law** is imposed. At the same time, authors are required, in order to allow them to upload their works, their songs to the platforms, to identify and label them: to explicitly outline the type of work by genre (if it is relaxing music, dance music, etc.) and that information is what is being used by the platforms to generate artificial intelligence, because, having all the works labeled by the authors themselves, they know how to program machine learning to develop works that, precisely, have those characteristics. And let us keep in mind that this labeling is mandatory in order to be able to upload music.

Two possible solutions are presented here: one, again, to make authors aware that, when they do that, it is precisely to facilitate the generation of music by artificial intelligence by the platforms, and another, to clarify that this imposition has nothing to do with the transparency obligation we are talking about, which weighs on the platforms

and compels them to have **transparency** as to whether they use **algorithms** or not, so that it is known when they are using artificial intelligence for creating recommendations and *playlists*.

Lara Chaguaceda: Regarding the foundational models for public administrations and whether we are late, I think it is not for me to make an assessment, but, as a public employee, I cannot say or assume that we are late, without a solution, because then my work would be meaningless. My job is to try to arrive on time or to try, from where we are, to catch up with those who have arrived on time, from the institutional and state point of view.

I believe that a small difference should be made between models "for" public administrations and models "of" public administrations. When I referred earlier to the foundational model trained in Spanish, I was alluding, so to speak, to a model "by" the public administrations, an exercise by the public administrations for a model to be trained in Spanish, due to the relevance and projection that this entails.

As for models "for" public administrations, of course we are on time. They will have to be developed in a million areas, so that they can be another tool for providing services to society in an efficient and effective manner.

Question 2

Thank you very much for your very clear input. I wanted to ask a question to find out if there is already a state of the art in this regard: What is the degree of transparency that will be required for fundamental models in cases where it is considered that the risk of their use will be lower?

Because, as far as I have understood, they will be required to report on the basic operation of the algorithms, in order to prevent them from being one hundred percent black box algorithms, but the level of transparency may affect both the possible operation of a licensing of works or remuneration, as well as another dimension that we deal with less and has to do with the obligation imposed to report on what content has been generated with artificial intelligence. And I say this from the point of view of many creatives, who use artificial intelligence tools in their creative processes and right now they are wondering whether they have to report that they have used artificial intelligence, when, perhaps, that use has a 100% creative purpose and will not confuse anyone or generate social terror, or a state of alarm, or anything like that and it seems to me that one thing is in line with the other.

Ibán García del Blanco: The obligation is the same, the obligation of transparency is the same for large and small as far as intellectual property is concerned. However, the other obligations are not the same, as I stated before, for those that generate systemic risks and those that do not. But, in terms of intellectual property, there is no doubt, even with respect to open source models: the intellectual property obligation is exactly the same. The only thing that the law specifies is that, in the case of small and medium-sized companies, or small and medium-sized entrepreneurs, the requirements for compliance with this obligation must be proportionate; in fact, it is understood that the administration must facilitate the manner in which this obligation can be fulfilled.

Regarding the second issue, in general, **labeling** must be complied with. The law, the Regulations provide that, in artistic matters, when dealing with artistic, satirical, etc., etc.,

creations, it must be done in accordance with an adequate respect for the artistic experience. An example to which I always give is that if you go to see Indiana Jones at the cinema and in some sequences he appears young, it is not necessary to have a sign in each of them indicating "This is Indiana Jones made look young by artificial intelligence"; a mention at the beginning or at the end of the movie warning that artificial intelligence has been used is more than enough. And I would say more: in the case that artificial intelligence is used in a clearly instrumental way, as a tool that assists the creative process, there is no need to point out anything, that is, it will be a human work, unlike those created, mainly or exclusively, by or with artificial intelligence. They are different cases.

Question 3

I hear that, probably because of excessive responsibility on your part, you blame yourselves to some extent for the introduction of the exception on text and data mining in the 2019 Directive which, to me, however, raises a thought that I would like to raise: when this exception was introduced, generative artificial intelligence was science fiction. So how can it be that this foresight, given when this reality did not exist, is then applied to it and disrupts it to such an extent? Of course, I believe that, if it were only Spain, the solution would be clear: legislative reform. In any case, I would like to ask you what solution you propose to this situation.

Ibán García del Blanco: As for me, I would argue, of course, that it makes no sense to use this exception to cover such behavior. I do not think that a reform is even necessary because, even if we want to refine Articles 3 and 4 of Directive 2019/790, I can assure you, because I now know well how the European Parliament works, that this occasion would be used to question absolutely everything, even the most basic parts of that regulation, because this is my almost daily experience in Parliament.

So I believe that, either at the national level some patch can be put in place or some improvement can be introduced, or, as I say, with a simple **interpretation guideline,** it should be more than enough.

Question 4

First of all, I would like to take this opportunity to congratulate SGAE on its anniversary and thank them for this fantastic Congress. Along the same lines, I believe that we are doing ourselves a disservice by taking as a reference the limit introduced in Articles 3 and 4 of the Directive and forgetting the **three-step rule** and other elements that make up the system of limits in our intellectual property law.

Constantly, among colleagues who like intellectual property, we come to the conclusion that we should be clear and state that there is no exception or limitation that protects the use of works without the consent of their owners, without stopping to analyze whether it is one type of mining or another. The use of works without consent is not allowed because an **exclusive right** is at stake, not a right to remuneration. Therefore, if there is no authorization, it does not work. This must be our story and no other, and affirm the right. I believe that we must operate from the exclusive right, in which authorization is required, without which there can be no remuneration or use.

Question 5

I would like to thank Ibán. All authors in Germany are very grateful for the Report you pro-

moted on "Cultural diversity and conditions for authors in the European music streaming market[19]" What do you wish to happen with this report after the June 2024 elections to the European Parliament? Do you think AI and *streaming* need to be addressed now, with a broader scope? It seems that a treatment that addresses, as a single topic that merges sectors, copyright and legislation, is already necessary.

Question 6

Yes, we can extend big congratulations to the organizers of this Congress and celebrate the Community regulation, even though there is still this discussion about whether the U.S. is ahead of us because they invent and we are late, legislating.

As my German colleague from GEMA[20] has just stated, the truth is that creators, not only at the European level, but worldwide, and I speak as a representative of the European Composers' Alliance (ECSA[21]), have a criterion and an awareness of absolute admiration for what is being done in Europe.

At least from the point of view of the creators, in Australia, Japan and the United States, there is admiration for Europe for its leading role in the world in terms of legislation. And this is very positive and you know very well, Ibán, that we have been continuously sharing the problems we were facing with you.

We have also talked about the problems you have faced, Cristina, in the defense that authors' societies have been carrying out against buyouts. It is true that the system of the big multinationals, of the platforms, is designed and, each time, more and more refined so that we, as creators, as authors, would give them even the MIDI, that is, the description, note by note, of each of our compositions. This is absolutely contrary to moral right, but it happens because there is a position of power and an abuse of power, which prevents a creator as an individual from being able to confront the power of a multinational, unless they risk losing their job.

So it is true that the prevailing system, apart from being disrespectful to the legislative work of the European representatives, has come to engulf, absolutely, our European system and put it at the service of text and data mining, of artificial intelligence.

Faced with this phenomenon, we have a difficult defense, even though these contracts are illegal in Spain and Europe, because if you go out to Brazil, the U.S. or any other country, they are legal there.

Therefore, I would like to insist on the importance that, in Europe, we continue to legislate, and that we all remain in close contact. I think it is very valuable and, as the German colleague stated, we are at a time when compliments are in order. Ibán: thank you very much for all the work you have done. I have to say that so many colleagues in Europe and worldwide would love to have a representative like you.

And I must also say that, at the European level, there are very positive feelings about the solid professional career of Cristina Per-

[19] https://www.europarl.europa.eu/doceo/document/TA-9-2024-0020_EN.pdf

[20] German collecting society: https://www.gema.de/en

[21] https://composeralliance.org/

piñá-Robert, now at the helm of SGAE, so I am sure that we will align efforts, collaborate and find common strategies that will strengthen our shared goals.

Ibán García del Blanco: Thank you once again. You have to do a roundtable like this, but with the presence of Pedro Sánchez and tell him all these things you are saying about me *(laughs)*. Regarding the question regarding the report on streaming music, which is very well formulated, one thing is what I expect from it, and what is already happening, is that it will encourage renegotiation or a **new dialogue** between the big companies, the platforms and the representatives of the authors and the authors themselves. I think it is already happening, we already know about some initiatives.

I believe that we can hope, I have presented a pilot project for this purpose, that, at least in the short term, the *European Music Observatory* will be created, which would be a very important institutional step forward, because it would force the debate on music policies to be permanently on the table, between public institutions and the sector. We will see what happens.

And not necessarily, but the industry may be forced to demand some legislative reform in the future, if the market does not organize itself well enough to satisfy authors, although I do not think this is the necessary end.

And one last question that I find very interesting thinking about the content of another future table: we have talked about works of human creation. At some point, we have to talk about how we are going to treat **works created by artificial intelligence.** I myself, who started off opposing their protection, no longer find myself in that position. We have to think about exactly what is the legal concept under which we will have to give them protection from the legal point of view. I defend a newly created legal concept, but there are those who talk about the use of patents or other possibilities. In any case, I believe that this issue deserves to be addressed and it seems to me a good topic for another roundtable.

Mercedes del Palacio: Indeed, it is a magnificent proposal, with which we can conclude this roundtable and proceed to the closing of this Congress.

Closing remarks

Marisa Castelo

President of the Instituto Autor (Intellectual Property Institute)

Juan José Solana

President of the Fundación SGAE (SGAE Foundation)

Marisa Castelo: Have we reached the end?

Juan José Solana: Sadly, yes.

Marisa Castelo: Here we are, a lawyer and an author: the president of the Fundación SGAE and the president of the Instituto Autor. The first thing I want to do is to thank Antonio Onetti, president of the SGAE (Sociedad de Autores Españoles [Society of Spanish Authors]), for his unconditional support. The idea of this Congress came up as an activity for the 125th anniversary of SGAE. The moment we proposed this idea, as doing something about artificial intelligence, there could have been those who said, "not another artificial intelligence thing, this is like the metaverse". Antonio understood the issue clearly, in the sense that it is not like the metaverse, which to me has always seemed to be a bluff and, in fact, some time ago, I asked Andy Ramos to write a text entitled *"Dismantling the Metaverse"*.

I believe that artificial intelligence is going to turn our lives upside down, not only at the authorial level, but at all levels. AI affects every field, everyone, and it is here to stay. Therefore, the more people talk about it, the better. Thanks to the vision of the president of SGAE, we have been fortunate to have the budget to hold this Congress, which has been comprehensive and complete.

I would like to thank, as I have already stated, the SGAE, on its 125th anniversary; of course, the Fundación SGAE and its team: Rubén Gutiérrez, Leyre Abadía, Javier Castillo; and our sponsors, the Autonomous Community of Madrid, which did not hesitate for a moment when it came to sponsoring this event, and the Ministry of Culture, which is always available.

And allow me to give special thanks to Ibán García del Blanco: you are a very important person for us, you are doing invaluable work, which I believe is part of your personal conviction. You are leading a wonderful project at the European level and long may you continue in the European Parliament.

We wanted to bring the debate here. You have heard different points of view because, although most of the voices have been aligned, some have not, and that is always positive. In fact, the opinion with which I disagree the most from what I have heard over these two days is that of a great friend of mine, who yesterday stated, in a slightly derogatory way, that Europe was a space for bureaucrats and the United States, a space for technology. We had Mr. Cervera Navas,

my friend Leonardo, explain what European humanism is, so I could not disagree more with that statement and agree more with Leonardo that AI is an excessive technological irruption, which plunges us into darkness. And I am much more of a catastrophist because I give heed to *cui prodest*. Yesterday the AI-themed podcast *Monos Estocásticos* were talking about how this speaker had insisted on conducting an economic assessment to see who artificial intelligence benefits, because in their podcasts they have already talked about the many paid artificial intelligence services.

There is a concentration of media in artificial intelligence companies and I have no doubt that they will soon start selling subscription *packs* that include several services, one of them, tools of this type, apart from *MidJourney*, which costs €12 per month, for example, and is already widely used by those who need it professionally as a useful design tool. Yesterday, in this Congress, we were shown that there are 4 billion users of technology, social media and so on. If these companies get each of those users to pay them €2 a month for storage, artificial intelligence and other services, the *cui prodest* is clear.

I also believe that the concentration of technological media can end up creating huge and very dangerous structures, which can even lead to a displacement of sovereignty and end up exerting a dangerous influence. Here we have been talking about creators, but I understand that the European legislature's first concern is the freedom of citizens and the free formation of democratic will. I am absolutely convinced that electoral processes have already been interfered with, and I have no doubts about that.

All of this can place these giants in positions of power, to the point, as we have seen recently, of head-of-state honors being given to Elon Musk in Israel[1]. A process is beginning that I believe is extremely dangerous. This is my opinion.

Here we have heard of the finest jurists, of the fathers of the European Union, of Kafka, of Einstein and I very much share Asimov's outlook. Asimov said that science fiction literature had to lead people to think about things that could become possible. There is a documentary on *Filmin* entitled *"Isaac Asimov, a message for the future"*, of which I would have liked to show some images in this Congress, in which you can see and hear Asimov who, in the 1970s warned that there would come a time when humankind would have to face technology and make very serious decisions in relation to it. And the future of humankind would depend on the decisions that humankind would make at that moment. Personally, I think that time is now.

For my part, I trust that this Congress has served this debate, to recognize, above all, that artificial intelligence is unstoppable, something we all agree on, but it must be implemented rationally and in a way that does not destroy everything created to date, because, as the Regional Minister of Culture, Tourism and Sports of the Autonomous Community of Madrid stated at the Congress opening, we are not only talking about the rights of authors, artists and companies: government authorities have been

[1] Auth. Note: As of the publication of this text, and in light of Elon Musk's preeminent position in the Trump Administration, and consequently in the rest of the world, it appears that the prediction is beginning to come true.

investing in the creation of cultural fabric for years. Some of us know what the Spanish audiovisual industry was like, for example, 30 years ago and what it is like now, and this change is the result of investments of a lot of public money that must also be protected. This is another point of view that we must take into account.

In this farewell duet, I would like to give the floor to the author, who is an excellent musician: José Solana, president of the Fundación SGAE.

Juan José Solana: If you want me to state my point of view as an author, it is largely similar to what Cristina Perpiñá stated previously when asked precisely about that. But I would like to add a consideration with certain historical analogies. It is not the first time that I remember a cataclysm of these characteristics taking place in music, in the music industry. I suppose that in other areas of culture it has also happened, but it happened, above all, in music. And furthermore I experienced it myself, because it was in the 1980s when the beginnings of artificial intelligence appeared in music: sequencers, synthesizers, computers specialized in music. I remember that it seemed to us young people at the time that a world of possibilities was opening up.

My teachers were a little bit more reluctant and immediately realized the first thing that was going to happen, and that is that a kind of "democratization of music" took place. Before that, having a piano at home was for musicians. But, suddenly, there were keyboards in every house and musicians appeared everywhere. Musicians, of course, with little musical training. And this, to continue with the analogy, has a lot to do with the areas that Klaus pointed out this morning, where artificial intelligence is going to wipe the floor with first, those with a low level of creativity, in which it is only necessary to propose simple music, which serves to accompany what is being done, *fitness* or something similar, background music, etc.

That happened in the 1980's and what it caused was that the training musicians, in a way, took refuge in quality. Perhaps something similar is going to happen now. Maybe we need to barricade ourselves, to entrench ourselves in the quality of creation as a level that, no matter how much artificial intelligence advances, is very difficult to reach. And I say this with full knowledge of the facts. As a musician I learned or was educated to analyze music in depth and, thanks to that, I know that quality works are so by highly sophisticated parameters.

There are a number of factors inherent to the human mind that can only come from it, from the mind of the creator, capable of a complexity that I find very difficult, I insist, to think that it can come from artificial intelligence, inasmuch as to have the talent to make a film like, for example, *Casablanca*. Because it is one thing for the AI to make a movie with a Japanese girl walking the streets of Tokyo, as we have seen, and quite another to reach the complexity of a precisely planned script full of feelings and reminiscences like *Casablanca*. Fortunately, I believe that this is still very difficult to achieve. So, at least in the short term, we are going to have to take refuge in that, in terms of the quality of the art.

Let us see if they let us. Thank you.

Closing

Carmen Páez Soria

Undersecretary of the Ministry of Culture

Good afternoon everyone:

Colleagues, I see many colleagues, friends and acquaintances. So, first of all, I would like to thank, of course, Antonio Onetti, president of the Sociedad General de Autores y Editores (General Society of Authors and Publishers); Juanjo Solana, president of the Fundación SGAE (SGAE Foundation), and, of course, Marisa Castelo, president of the Instituto Autor (Intellectual Property Institute), for the opportunity to close this "International Congress on Intellectual Property and Cultural Industries in the face of Artificial Intelligence".

I would like to take this opportunity to congratulate you on the 125th anniversary of the Society, on the one hand, and also for the organizing this Congress, because, as we were saying, no matter how much we talk about this subject, it is still necessary to debate it.

I would also like to thank all the people who have participated in the Congress for sharing their ideas, reflections, analysis and knowledge, generating this space for debate and nurturing it with their contributions, allowing us to learn about the challenges and opportunities we face from different perspectives. Yesterday Ryan Abbott stated that we are at a particularly interesting time and the truth is that, indeed, we also believe this at the Ministry of Culture.

This is a particularly intense and interesting time from a legal perspective. We must decide which system we want to have. I was just now listening to whether the United States is more technological and Europe is more bureaucratic. I would say Europe is more humanist. And I believe that this is the model that has always guided the European legal system and is the path we should follow. Therefore, because technology is transnational, discussions must be approached from both a national and international perspective. As hackneyed as it is to say that technology has no frontiers, it is still a reality.

During these two days, several proposals have been raised: the opportunity to develop the licensing market has been discussed, questions have arisen about where the limits of the system are, whether it is necessary to talk about a legal personality of artificial intelligence; the need to establish a right of fair and equitable remuneration has been raised and the importance of raising awareness and educating about the impact that artificial intelligence is already having. Professor Jane Ginsburg pointed out that the objective should be to ensure that the legitimate interest of the authors is not prejudiced. We are not only talking about an economic issue, but also about dignity and respect for works and authors.

We at the Ministry of Culture believe and are committed to the fact that this should be the approach from which to carry out analyses and projections. We must remember, and this is an idea that both the Minister and the Se-

cretary of State for Culture often put forward, that culture is what defines and differentiates us as a species. It is therefore essential to preserve, protect and guarantee it.

Artificial intelligence is already a reality and is integrated into many processes, mainly those linked to the automation of tasks, and all of them represent an undeniable opportunity for the cultural sector as well. Of course, the new tools should serve to improve the management of intellectual property rights, allowing entities to be more efficient, and will be a very useful tool in the fight against piracy, allowing us to reach more effective numbers.

Digitization, which, after all, is another form of technology, will also help to facilitate access to culture through a multitude of works, even if they are located in different parts of the world. But generative artificial intelligence also exists and affects the way in which cultural works and content are created. Generative Artificial Intelligence is no longer aspirational, it is a reality and, moreover, with an increasingly high level of penetration.

In Spain, we find many examples of the incorporation of these types of systems in national productions. However, we must remember that the impact and intensity of use in each of the cultural sectors is different. The circumstances and possibilities of the publishing, audiovisual, music, stage or cultural sectors are different and so are the impacts. Similarly, AI affects the various holders of intellectual property rights differently. Therefore, it is pertinent to take into account all these divergences in the debate and listen to everyone.

There are many ideas that can be found even if we limit ourselves only to the field of intellectual property and leave out other approaches or legal areas, such as the impact on image rights or privacy. In any case, it is essential to start from the premise that it is essential that artificial intelligence systems, the foundational models, comply with the current intellectual property regulatory framework. It is necessary that essential cultural rights, such as the rights of creators, artists, production companies, publishers and other owners of their works, be guaranteed and protected.

From this scenario, the various legal alternatives in relation to assets generated by artificial intelligence have been discussed, as Ibán stated at the end of his talk. I want to take this opportunity to refer to the need to ensure cultural diversity. These days we are also talking about the role played by algorithms and it is important that we include in this debate the need to avoid homogenizing cultural expression.

Development, and in particular technological development, must serve the progress of society, it must take the citizens into account and, for this reason, we believe it is essential to place our creators at the center of this debate.

We work from this premise in the Ministry of Culture, in dialogue, of course, with all the holders, with technologists, jurists and, of course, with the rest of the institutions, always in favor of the preservation and promotion of our culture, guaranteeing cultural rights, such as intellectual property and the protection of cultural diversity.

The future, it is said, will not build itself, but we should not let artificial intelligence build it autonomously. For this reason, you can count on the Ministry of Culture, on our dedication and shared vision to collaborate towards a better scenario for all.

Thank you very much and good afternoon.

List of speakers

RYAN ABBOTT
Artificial intelligence lawyer, physician and writer

Ryan Abbott, MD, JD, MTOM, PhD, lawyer, mediator and arbitrator for JAMS, Inc; Professor of Law and Health Sciences at the University of Surrey School of Law and Adjunct Assistant Professor of Medicine at the David Geffen School of Medicine at UCLA. He has worked as an expert for, among others, the UK Parliament, the European Commission, the World Health Organization and the World Intellectual Property Organization. Professor Abbott is a licensed physician and patent lawyer in the United States, and a solicitor advocate in England and Wales.

He is the author of "The Reasonable Robot: Artificial Intelligence and the Law" (2020), the editor of the Research Handbook on Intellectual Property and Artificial Intelligence (2022). He has published numerous articles on life sciences and intellectual property issues in leading legal, medical and scientific books and journals, and his research has been featured prominently in global media such as The Times of London, The New York Times, Financial Times and others.

JOSÉ MARÍA ANGUIANO
Lawyer, expert in Computer and Technology Law

He holds a Degree in Law from Madrid Complutense University, a Degree in Computer Science from Polytechnic University of Madrid and a Master's Degree in Computer Law from Boston College. He previously held the position of Partner – Director of Anguiano & Asociados and since 2001 he has been a Partner in the Information Technology Department of Garrigues. He is also Managing Director of LOGALTY and BUROVOZ and Director of the *Foro de las Evidencias Electrónicas* (Electronic Evidence Forum), among other positions, which he combines with teaching New Technologies Law at the Carlos III and CEU-San Pablo European Universities of Madrid and ICADE (*Instituto Católico de Administración y Dirección de Empresas* (Catholic Institute of Business Administration).

FERNANDO CARBAJO CASCÓN
Full Professor of Commercial Law at The University of Salamanca

Full Professor of Commercial Law at the University of Salamanca, specialist in Competition and Intellectual Property Law. Dean of the School of Law of the University of Salamanca. Master of the Provincial Court of Salamanca. Chairman of the First Section of the Intellectual Property Commission. President-Elect of the *Asociación Literaria y Artística para la Defensa del Derecho de Autor* (Literary and Artistic Association for the Defense of Copyrights).

MARISA CASTELO
Lawyer. Former president of the Instituto Autor (Intellectual Property Institute)

A graduate in Law and Legal Sciences from ICADE, she has been a practicing lawyer since 1990, having focused her professional career in the areas of intellectual property and entertainment. In 2004 she founded LE-

GALARTE, which advises and has advised important authors, artists, private companies and public entities, both Spanish and international. Litigation specialist, having been involved in more than a thousand criminal and civil lawsuits in intellectual property and related matters; Arbitrator in several arbitration chambers and member of the ICAM's (*Ilustre Colegio de la Abogacía de Madrid* [Madrid Bar Association's]) public defender's office since 1995. She has been a movie producer ("*Operación E*", 2012) and from 2020 to 2025, she has been President of the Instituto Autor (Intellectual Property Institute).

LEONARDO CERVERA NAVAS
Secretary General, European Data Protection Supervisor

He joined the European Commission in 1999 and since then has been working in the field of data protection in EU institutions. In 2010 he joined the European Data Protection Supervisor (EDPS), the European Union's data protection authority, as head of unit; in 2018 he was appointed Director and in July 2023 Secretary General, being responsible for the coordination and implementation of the institution's strategies and policies. He holds a Degree in Law from the University of Malaga and in European Law from the University of Granada. He was a Professor at Duke University in North Carolina (U.S.). He holds a Diploma in Human Resources Management from Kingston University (UK) Fellow of the Academy of Sciences of Malaga (correspondent in Brussels).

LARA CHAGUACEDA BERMÚDEZ
Deputy Director General of Intellectual Property. Ministry of Culture

She holds a Degree in Law and Economics from Carlos III University, Madrid. Member of the Senior Corps of Civil Administrators of the State and has held various technical and senior positions in the Ministries of Justice, Economy and Competitiveness and Labor, Social Security and Migration. Currently Deputy Director General of Intellectual Property at the Ministry of Culture, where she has also served as Advisory Member and Secretary of the First Section of the Intellectual Property Commission. She has postgraduate studies in public policy, good regulation and regulated markets, as well as in artificial intelligence applied to social and legal sciences and public administration.

IBÁN GARCÍA DEL BLANCO
International Affairs Director Lasker
Member of the European Parliament between 2019 and 2024

Socialists and Democrats (S&D) Spokesperson in the Committee on Legal Affairs and coordinator of the S&D Group in that Committee. Among other responsibilities, he has been part of the negotiating team for the Artificial Intelligence Act and the Data Act and co-drafter of the report on virtual worlds. As a member of the culture committee, he produced the report on "Cultural Diversity and Conditions for Authors in the European Music Streaming Market", which was adopted in the January 2024 plenary session by a very large majority. He was chairman of AC/E (*Acción Cultural Española* [Spanish state entity promoting Spanish culture]) and is currently a member of the board of trustees of the *Biblioteca Nacional de España* (National Library of Spain) and International Director of Lasker.

JANE C. GINSBURG
Lawyer and Professor of Intellectual Property at Columbia Law School

BA, MA University of Chicago; JD Harvard; DEA, Doctorate in Law Panthéon-Assas Uni-

versity Paris; Honoris Causa Doctorate from the University of Neuchâtel, Switzerland. She holds the Morton L. Janklow Chair in Literary and Artistic Property Law at the Columbia Law School and is co-director of the Kernochan Center for Law, Media and the Arts. She teaches Copyright Law, International Copyright Law, Trademark Law, Legal Methods and Interpretation of Law, and is the author of case books on all five subjects, as well as numerous books, articles and book chapters on national and international copyright law and trademark law. She is a Fellow of the British Academy, a Fellow of the American Philosophical Society and of the American Academy of Arts and Sciences, and an Honorary Fellow of Emmanuel College, Cambridge.

KLAUS GOLDHAMMER

Founder and Managing Director of Goldmedia

Prof. Dr. Klaus Goldhammer founded the consulting firm Goldmedia in 1998, where he is Managing Director, at its headquarters in Berlin.

His work focuses on the areas of strategy and business development, market and competition analysis, forecasting, organization and coaching. Throughout his professional career, he has managed a very broad portfolio of clients and projects, covering both the private and public sectors, such as the EU, ministries, regulatory bodies, associations and organizations.

Klaus Goldhammer studied journalism and business administration in Berlin and London, and his doctoral thesis was on the subject of "Radio and Advertising". Since 2011 he has been honorary professor of media economics at the Free University of Berlin.

ANTONIO MUÑOZ VICO

Lawyer. Intellectual Property Partner at Garrigues

Antonio is a partner in the Intellectual Property Department at Garrigues, with extensive experience in the field of copyright and cultural and art law. He advises in the audiovisual, music and publishing sectors, right to information and freedom of expression and literary and artistic creation, among others. He holds a Degree in Law from the University of Granada, studied intellectual property at the London School of Economics and has a Master's Degree in Business Law from *Centro de Estudios Garrigues* (Garrigues Educational Institution) in collaboration with Harvard Law School. He is president of the Law and Culture Section of the Madrid Bar Association.

ANTONIO ORTIZ

Technology analyst. Monos Estocásticos podcast

Computer Scientist. Founder of Xataka, technology analyst and co-creator of the artificial intelligence podcast "*Monos Estocásticos*".

Monos Estocásticos is a weekly podcast on artificial intelligence created and hosted by Antonio Ortiz and Matías S. Zavia: "We do everything that "stochastic monkeys" know how to do: stitch together sequences of linguistic forms that we have observed in our vast training data according to probabilistic information about how they combine."

NURIA OLIVER

Expert in artificial intelligence, holder of a PhD from Massachusetts Institute of Technology (MIT)

Expert in Artificial Intelligence, PhD from MIT, member of the Royal Academy of Engi-

neering and corresponding member of the *Academia de Ingeniería de México* (Mexican Academy of Engineering). Co-founder and vice-president of ELLIS Europe. Independent member of the Board of Directors of AESIA (*Agencia Española de Supervisión de Inteligencia Artificial* [Spanish Agency for the Supervision of Artificial Intelligence]) and Spanish representative of the panel of experts for the preparation of a report on Artificial Intelligence and Security led by the Government of the United Kingdom. According to Research.com, she has the highest scientific impact of any female computer science researcher in Spain. Author of the book "Artificial Intelligence, naturally". Her scientific contributions have been recognized with numerous awards, including the MIT TR100 Young Innovator Award, the *Premio Nacional de Informática* (Spanish National IT Award) and the *Rey Jaume I* [James I of Aragon] Awards in New Technologies. She firmly believes in the power of technology to improve people's quality of life.

MERCEDES DEL PALACIO TASCÓN
Civil administrator with expertise in cultural law

A senior Spanish government official for almost four decades, Mercedes is an expert of the Spanish culture industry and a strong advocate for copyright and intellectual property both in our country and at the highest European levels. She protects copyright and the audiovisual sector in the face of the challenges and demands imposed, especially by the rise of the digital market in the international sphere.

From 2012 to 2023 she was cultural advisor in the Spanish Representation to the EU. She currently works as a national expert in the audiovisual policy unit at DG Connect of the European Commission. From 2009 to 2011 she was undersecretary of the Ministry of Culture and between 2002 and 2004 secretary general of the *Instituto Nacional de las Artes Escénicas y de la Música* (Spanish National Institute of Performing Arts and Music) (INAEM).

CRISTINA PERPIÑÁ-ROBERT NAVARRO
General Director of the Sociedad General de Autores y Editores (General Society of Authors and Publishers) (SGAE)

General Director of the Sociedad General de Autores y Editores, having held positions of great responsibility in international entities such as the International Confederation of Societies of Authors and Composers (CISAC), where she was Director of Legal and Institutional Services (2021-2023). Previously, she had worked at SGAE from 1998 to 2018 holding various positions such as director of Regulatory Affairs and Digital Markets (2016-2018) or coordinator of its Legal Services. She holds a Degree in Law from the Complutense University of Madrid, she is a professor, speaker and regular panelist at international conferences and congresses on intellectual property, collective rights management and artificial intelligence, and author of several publications on copyright and intellectual property.

ALEJANDRO PUERTO MENDOZA
Territorial Registrar of Intellectual Property of Madrid

Intellectual Property Registrar. Department of Culture, Tourism and Sports, Autonomous Community of Madrid. He holds a Degree in Law from Madrid Complutense University. Career civil servant of the Senior Technical Corps of General Administration of the Autonomous Community of Madrid. Professor of Civil Law at the Cardenal Cisneros University. He collaborates with public and private training centers in the dissemination of knowle-

dge of copyright and digital law. Author of *Derecho Digital: Fundamentos Básicos.* (Digital Law: Fundamentals.)

ANDY RAMOS. Lawyer
Partner at Pérez-Llorca

Partner at Pérez-Llorca and co-founder and member of the board of directors of the *Asociación Española de Derecho del Entretenimiento* (Spanish Association of Entertainment Law) (DENAE). He advises entertainment and technology companies on issues related to, among others, intellectual property and digital regulation, transactional matters, legal advice and court proceedings. He is a frequent speaker at conferences for seminars and specialized courses on Intellectual Property, Internet, Technology, Robotics and Entertainment, and has been invited as a speaker by the World Intellectual Property Organization (WIPO) in Brazil, Switzerland, Indonesia and the Philippines, as well as by the video game industry as a speaker in Lithuania and the United Kingdom. He has coordinated the international study commissioned by WIPO "The Legal Status of Video Games: Comparative Analysis in National Approaches", and the first handbook on Video Game Law in Spain. Co-author of "Protection and Management of Intellectual Property in the Metaverse" and author of several articles and editorials on the implications of intellectual property in artificial intelligence

CONCEPCIÓN SAIZ GARCÍA
Professor of Civil Law. University of Valencia

Professor of Civil Law at the University of Valencia. Member of the 1st Section of the Intellectual Property Commission. LLM from the University of Munich. Director of the R&D Group on Intellectual Property of the University of Valencia, author of numerous publications on Intellectual Property and teacher of several Masters and specialization courses in Spain and abroad.

MATÍAS S. ZAVÍA
Science and technology evangelist

Editor of Xataka and science and technology communicator. His latest release is *Monos Estocásticos*, an artificial intelligence podcast.

On March 14 and 15, 2024, the **International Congress Intellectual Property and Cultural Industries in the face of Generative Artificial Intelligence** took place in Madrid, organized by Instituto Autor, with the collaboration of SGAE, on its 125th anniversary, SGAE Foundation, and sponsored by the Subdirectorate General of Intellectual Property of the Spanish Ministry of Culture and the Council of Culture, Tourism and Sports of the Community of Madrid.

These are the presentations and interventions of those days, updated on the occasion of this publication, which address the technological, legal, economic and creative dimensions of this inescapable phenomenon that constitutes the irruption of generative artificial intelligence and its impact on all creative trades and cultural industries.

As part of its extensive work of study, research and training, Instituto Autor, which celebrates its first twenty years in 2025, continues to be dedicated to understanding and analysing this phenomenon in depth in order to respond to the —more than ever— necessary protection of the intellectual property rights of those who create and disseminate the works and the knowledge on which AI models are based, without respecting them.

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