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Towards a statutory remuneration right for GenAI training for commercial purposes

IUM-Conference,
(Kollektive) Vergütungsmodelle für KI-Nutzungen: Wege zu einem fairen Interessenausgleich
Munich 13 Nov. 2025

Models for Author's Remuneration for GenAI uses /Vergütungsmodelle: rechtliche Ausgestaltungsoptionen/

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IIC (2024) 55:1129–1165
https://doi.org/10.1007/s40319-024-01481-5

ARTICLE

Elaborating a Human Rights-Friendly Copyright Framework for Generative AI

Christophe Geiger

Accepted: 25 April 2024 / Published online: 3 June 2024

Abstract As works are increasingly produced by machines using artificial intelligence (AI) systems, with a result that is often difficult to distinguish from that of a human creator, the question of what should be the appropriate response of the legal system and, in particular, of the copyright system has become central. If the generator of copyright protection has traditionally been the author's creative input, AI forces us to reassess what in the creative process is special in human creativity and where the creative input lies in AI-generated works. But it also poses more fundamental questions on what the copyright system should achieve and who/what it should protect. In particular, since many human authors will potentially face the competition of these AI machines on the market, new ways of remunerating creators will have to be imagined while making sure that the copyright system does not stand in the way of these important technological developments.

IIC
https://doi.org/10.1007/s40319-025-01647-9

ARTICLE

Time to (Finally) Reinstall the Author in EU Copyright Law: From Contractual Protection to Remuneration Rights

Christophe Geiger · Silvia Scalzini · Ludovico Bossi

Accepted: 6 October 2025

Abstract The fair remuneration of authors and performers for the exploitation of their work is at the core of the rationales of copyright and related rights. Furthermore, the remuneration of creators benefits form a strong fundamental rights justification at the international and European level. However, the copyright system has since its inception poorly delivered on this objective, the revenues generated by the exploitation of creative works being still often unfairly distributed to authors and performers. Most recently, their revenues have also been affected by crises like the COVID-19 pandemic and the increasing use of generative AI technologies to output works potentially competing with those of human creators. The EU Digital Single Market Directive introduced for the first time in EU law general copyright-contract rules to protect the authors and performers in their contractual relations with deri-

Forthcoming:
International Review of Intellectual Property and Competition Law (IIC), 2025, Vol. 56, Issue 10

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Generative AI

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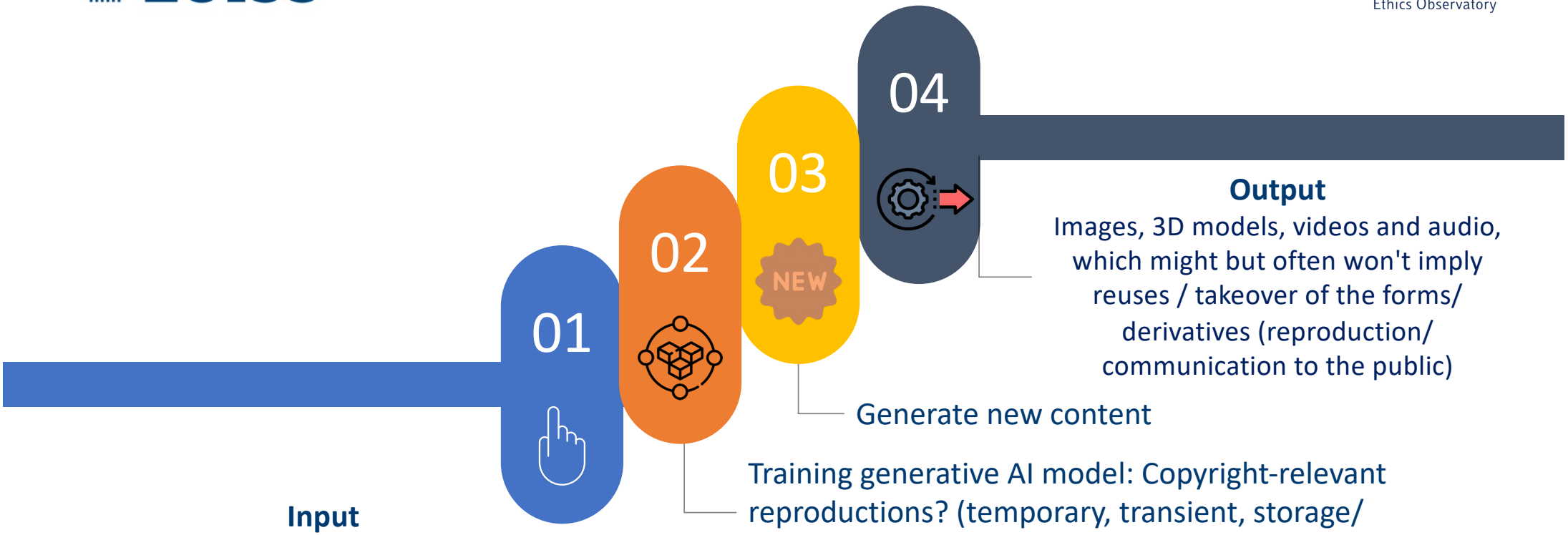

Input
Machine learning using TDM with possibly copyright protected works

Training generative AI model: Copyright-relevant reproductions? (temporary, transient, storage/ memorization)

Generate new content

Output
Images, 3D models, videos and audio, which might but often won't imply reuses / takeover of the forms/ derivatives (reproduction/ communication to the public)

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HUMAN RIGHTS FRAMEWORK FOR COPYRIGHT

Underlying Human Rights Framework – Overview

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Art. 27.1 UDHR
Right to participate in the cultural life […] enjoy the arts and to share in scientific advancement and its benefits.

Art. 19 UDHR
Right to freedom of opinion and expression

Art. 15.1 a ICESCR
Right to take part in cultural life

Art. 13 EUCF
Freedom of the arts and sciences,
The Right to Research

Right to enjoy the benefits of scientific progress and its applications

Art. 11 EUCF
Freedom of expression and information

Art. 27.2 UDHR
Right to protection of the moral and material interests […] of the author

Art. 1 Protocol No. 1 ECHR
Right to property
Art. 8
Right to Privacy

Art. 15.1 c ICESCR
Right to benefit from protection of the moral and material interests […] of the author

Art. 17.2 EUCF
Intellectual property
Art. 1 & 7 EUCF
Human Dignity/ Right to Privacy

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Human Rights Framework provides for Guidance

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- **Right to Science and Culture and Freedom of Artistic Expression**
  Arts. 27.1 UDHR, 15.1 a and b ICESCR, Arts. 11 and 13 EUCF, 19 UDHR,

  Art. 27.1 UDHR

  Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

- **Protection of moral and material interests of creators**
  Art. 27.2 UDHR, 15.1 c ICESCR, (Art. 17.2 EUCF, Art. 1 Protocol 1 ECHR)

  Art. 27.2 UDHR

  Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- Human Rights Framework **does not protect AI: AI itself** does not enjoy the mentioned constitutional right; There is no human rights protection for machines or the **ones operating machines**

What General Principles can be derived from the Human Rights Framework?

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- AI is essential for human beings to explore new avenues of artistic and scientific expression: The right and culture supports a right to train and develop generative AI systems via machine learning technology

- Anthropocentric approach: the human rights framework puts emphasis on the author

- Copyright is a tool to protect creators and creativity; The Human Rights framework does not secure the amortization of economic investment in AI technology; Generative AI system only protected if used as an instrument of the human creator – not a substitute

- **Protection of the material interests: Right to a fair remuneration of the author in the case of commercial use of his work, unless there are strong justification to do so out of competing human rights**

- Protection of the moral interest: Can authors prohibit that their works are used for AI training, e.g. for discriminatory and/or racist purposes (freedom of expression)? Can an author request attribution to certain reproduced extracts of his works or contest wrong attribution ? Can he oppose decontextualization/ alteration on the basis of the Fundamental Right to Research / Right to information (disinformation issue)?

Constitutional framework: The social function of copyright and competing fundamental rights justify exceptions, not necessarily absence of remuneration

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- Schoolbook decision (BVerG, 7 July 1971): German Constitutional Court held that "with the exclusion of the author's right to prohibit access, the public interest in having access to the cultural assets is satisfied sufficiently; the exclusion clearly defines the social obligation of copyright in this decisive area. *It does not follow from Article 14 paragraph 2 of the Constitution*, however, *that in these cases the author would have to make his intellectual asset available to the general public free of charge"*

- ***Free access does not mean access for free!***

- This is important with regard to the so called "Three Step Test" (Art. 9(2) Berne Convention) which frames the introduction and legality of new exceptions to copyright law. According to a human right-compliant reading of the test, remuneration rights help pass the second step with regard to the normal exploitation of the work (See "Declaration on a balanced interpretation of the Three-Step Test in Copyright Law" IIC 2008, 707).

In line with the rationales of copyright law

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- To **incentivize creativity/ free expression** for collective enrichment to enable new culture and science; *and*
- To **protect/ remunerate creators**; distributive justice rationale (Hugues and Merger, 2017)
- This justifications are present in both copyright and author's rights traditions, with different emphasis (however, the Statute of Anne of 1709, foundational for copyright tradition, emphasize the protection of authors).

IP Clause of the US Constitution (Article I, Section 8, Clause 8):

"*Congress shall have the power [...]* ***to promote the Progress of Science and useful Arts*** *by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries*".

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THE LEGALITY OF AI-GENERATED CONTENT TRAINED ON COPYRIGHT PROTECTED WORKS

U.S. Approach: AI-learning as fair-use?

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- Using works for TDM is **widely considered a fair-use** (see *Authors Guild v. Google* and *Authors Guild v. HathiTrust*)

- Several lawsuits engaged against AI system producers in the US (over 50 + around 14 outside US), claiming that these uses do not fall under the fair use-exception of US Copyright law because of the effect of the use upon the potential market; the argument is that the impact on the exploitation of the work is different then with TDM so that the reasoning can not be applied; exactly the opposite in the EU, where training of AI is squeezed at all costs in the TDM framework

- Several scholars argue it is *likely* Fair-Use (M. Sag, "Copyright Safety for Generative AI", 2023; M. Lemley, "How Generative AI Turns Copyright Law on its Head", 2023; M. Lemley & B. Casey, "Fair Learning", 2021 etc.); however, not undisputed see R. Brauneis, 2024, J.C. Ginsburg, 2024. ***All admit there is an uncertainty if courts will follow!***

Training AI: Is it a Fair Use?

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- **One decision** in relation to generative AI-systems so far, ruling against Fair Use (US District Court for the District of Delaware, 11 Feb. 2025, case No. 1:20-cv-613-SB, Thomson Reuters vs. Ross Intelligence): the AI companies were considered to compete "by developing a market substitute" (problematic with regard to the fourth factor); according to Judge Bibas, the effect on a potential market for AI training data is enough. Also, not transformative as training serves the same purpose: Providing an efficient legal search tool.
- **Two recent decisions** recently rules in favor of Fair Use (US District Court Northern District of California, 23 June 2025, case No. C 24-05417-WHA, Bartz vs Anthropic); US District Court, Northern District of California, 25 June 2025, case No. 23-cv-03417-VC, Kadrey vs. Meta).
- 1,5 Billion dollars settlement was announced on Sept. 5, 2025 in the first case (as the training on book piracy website was not considered "fair").

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"**Copyright and Artificial Intelligence, Part 3: Generative AI Training"**, pre-publication version, A report of the Register of Copyrights, May 2025, p. 107: "*Various uses of copyrighted works in AI training are likely to be transformative. The extent to which they are fair, however, will depend on what works were used, from what source, for what purpose, and with what controls on the outputs—all of which can affect the market. When a model is deployed for purposes such as analysis or research—the types of uses that are critical to international competitiveness—the outputs are unlikely to substitute for expressive works used in training. But* ***making commercial use of vast troves of copyrighted works to produce expressive content that competes with them in existing markets, especially where this is accomplished through illegal access, goes beyond established fair use boundaries***"

AI Training = Fair Use?

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→ **No legal certainty** at the moment, decision all emphasize that it is case dependent (e.g. no fair use if training from pirated websites;

Also, might be influenced by the result in EU? Will there be a "Brussel effect"? Rather hope for a "Strasbourg effect"!

→ Some licensing deals between big AI operators and publishers are reported, even the law is unclear (see the Open AI licensing agreements with Financial Times, News Corp and Shutterstock)

The Japanese Example: “Paradise for GenAI training”

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Japan, a civil law country, has established one of the most permissive legal environments globally for TDM

Article 30-4 of the Japanese Copyright Act allows the use of copyrighted materials for “non-enjoyment purposes”, which includes TDM *also for commercial purposes*, without the need for rights holder’s permission or compensation (see T. Ueno, The Flexible Copyright Exception for ‘Non-Enjoyment’ Purposes – Recent Amendment in Japan and Its Implication, GRUR Int. 2021, p. 145).

This broad and flexible exception has been praised as the most comprehensive globally (Thongmeensuk, 2024) and has been interpreted as permitting AI training. As such, AI developers would not be considered to infringe copyright when using protected works for training purposes under this law. However, interpretation *not undisputed*, as the legislation (from 2007) predates Generative AI.

EU Approach: Text and Data Mining is covered by Exceptions and Limitations

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EU Approach: Text and Data Mining is covered by Exceptions and Limitations

Use of datasets: Text and Data Mining (TDM). **Confirmed by the first decision on the topic issued on 27 Sept. by the Regional Court (LG) of Hamburg (LAION vs Kneschke)**

Machine-learning algorithm enables generative AI system to create literary and artistic content on its own – based on the computational analysis (TDM) of human works that served as training material

Within **EU legislative framework** there are the newly introduced limitations and exceptions for Text and Data Mining-purposes: Directive of 17 April 2019 on copyright in the Digital Single Market (CDSM- Directive)

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BUT

TDM exceptions were not designed to cover machine learning by generative AI systems!

Limitations and Exceptions for TDM purposes

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- Art. 3 introduces an exception for text and data mining for scientific research which solely benefits research organizations and cultural heritage institutions, while

- Art. 4 introduces an exception for text and data mining which is not restricted to specific institutions, and therefore could be relevant in the context of AI as these systems are usually operated by private commercial companies not covered by article 3.

- According to Art. 4 (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*", this could be relevant to solve any possible question of storage of protected works by the AI in the learning process. However, the third paragraph of Article 4 conditions the application of the exception to the fact that the use of works and other subject matters "***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***".

In short, rightholders can "opt out" of the exception, which potentially can make the provision rather ineffective if there is a high number of rightholders that are doing so.

Can we apply Art. 4 CDSM and its "opt out"-mechanism 'as it is' to generative AI?

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- European Commission considers that the existing legislative framework is perfectly fit for the purpose and that "**creation of art works by AI does not deserve a specific legislative intervention**", **since the TDM exceptions with their possibility of opt-out apply**, "providing balance between the protection of rightholders including artists and the facilitation of TDM, including by AI developers"
Commissioner Thierry Breton, 31 March 2023 on on Behalf of the European Commission

- **Art. 53, 1 c) AI Act: Explicit Extension of the TDM exception to AI**

Providers of general-purpose AI models shall

c) put in place a policy to comply with Union copyright law, and in particular to identify and comply with, including through state of the art technologies, a reservation of rights expressed pursuant to Article 4(3) of Directive (EU) 2019/790

Recital 105: "*Where the rights to opt out has been expressly reserved in an appropriate manner, providers of general-purpose AI models need to obtain an authorisation from rightsholders if they want to carry out text and data mining over such works".*

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New Italian law of 18 Sept. 2025 on AI makes the expressly the link between TDM and Generative AI (training)

Introduces Article 70-septies in the Italian Copyright Act:

"*Without prejudice to the provisions of the Berne Convention for the Protection of Literary and Artistic Works, reproductions and extractions from works or other materials available online or in databases to which one has lawful access,* ***for the purposes of text and data mining by AI systems, including generative AI****, are permitted in accordance with Articles 70-ter and 70-quarter".*

Can we apply Art. 4 CDSM and its "opt out"-mechanism 'as it is' to generative AI?

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- It would inhibit the development of this technology and thus ***make Europe totally unattractive for AI developers***.
- Provision carries a lot of uncertainties

→ When exactly is a content online "lawfully available" to use?

→ How exactly to exercise the opt-out?

→ And who should be able to decide about this, the author or its derivative rightsholder?

Risk that the opt-out is used to subject to license obligations the use of existing works for training purposes.

Problems: - **The author will not necessarily benefit directly from this situation as it will likely be the rightsholders that will license the uses, with the authors having to (re)negotiate successfully with their producers to get additional remunerations**

- Benefits only the very big AI tech companies (not start ups and individual innovators)
- High level of legal uncertainty for AI developers as it is difficult to assess the legal situation for every work/ use

Is AI Training covered by TDM exception?

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Not undisputed:

Some scholars argue that training is not covered by the TDM exception, but subject to the exclusive right, a[illegible] are copyright relevant reproductions that are not covered by the TDM exception (see e.g. Dornis-Stober, Sept. 2024; E. Rosati, 2025).

Two legal actions in the EU in France and Germany on infringement by CMOs against AI companies.

- Decision of the Landgericht (Regional Court) Munich of 11 November 2025 (Case 42 O 14139/24), *GEMA vs. Open AI*

The memorization/storage of song texts via AI training involve reproductions **not covered by the TDM exception** and therefore infringing. The output of song texts based on prompts qualify as communication to the public.

- However: Compare High Court of London, *Getty Images vs Stability AI*, 4 Nov. 2025, Case No: IL-2023:No infringement in AI training since no reproductions of the pictures.

-Major legal uncertainty! Harmonized approach? Munich court should have referred to the CJEU as it concerns interpretation of EU law (AI Act)

CJEU Referral on 3 April 2025 in Case C-250/25: request for a preliminary ruling of the Budapest Regional Court (Hungary), with two crucial questions:

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- Does training an AI system on copyright-protected materials qualify as "reproduction" under the 2001 InfoSoc Directive?

- If so, does the training fall within the scope of the text and data mining (TDM) exception for research purposes?

Problems:

- Considering that AI training falls under the exclusive right has serious implications with regard to public interest uses, as it would mean that training Generative AI for research purposes in the framework of Article 3 CDSM would not be exempted

- Loose-Loose situation for Start ups (and EU competitiveness) and creators (source of EU's creativity)!

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LIMITATION-BASED REMUNERATION PROPOSAL

Possible Solution: Training “permitted-but-paid”

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- It might be interesting to reflect on a possible **statutory remuneration to the benefit of the author for the use of his works in the context of TDM activities for generative-AI purposes**:

- A specific remuneration right to the **direct benefit of creators** could be elaborated for the use of their work to train machines, possibly subjecting this right to **mandatory collective management** to make sure it can be rapidly implemented (see in this *spirit of non-exclusive solution the Spanish Royal decree proposal of 2024*, which foresees the introduction of an extended collective management system for opted-outed works, due to impracticability of licensing).

- Model: EU private copy exception, introduced because 1.) use was impossible to control (pragmatic), 2. to safeguard the right to privacy (HR)

- These global collections of private copying levies according to a more recent study, totaling **EUR 1,046 million** in 2018 (CISAC, BIEM & Stichting de Thuiskopie, “Private Copying Global Study 2020”, Nov. 2020, p. 8)

Possible Solution

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- The remuneration obligation follows from the Human Rights Framework, especially the protection of moral and material interests of the author (Art. 27 (2) UDHR, Art. 15 (1) (c) ICESCR, 17 (2) EUCF, Art. 1 Protocol No. 1 and 8 ECHR).
- The remuneration to be paid needs to be monitored closely and preferably independently. This could be for example done by a new EU independent copyright institution to be created, (**Geiger, Mangal, 2022; Geiger, Iaia, 2024**).
- Opposing systematically AI systems and authors might not be a wise idea as they might very well cohabitate in the future and support each other.

The above takes on previous statutory remuneration proposals

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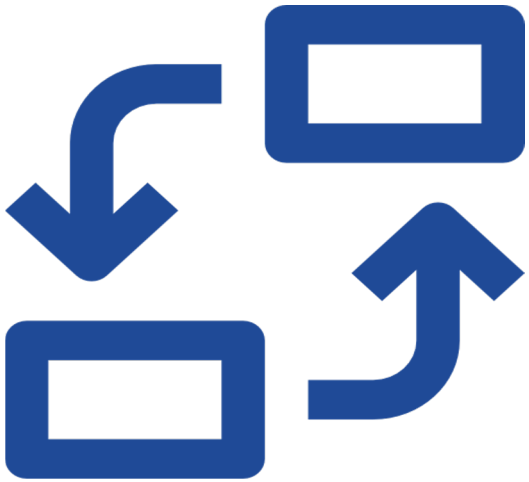
- Replace the opt-out of article 4 CDSM by a statutory remuneration for commercial TDM activities (TDM brokers), in order not to penalize start-ups developing useful AI systems in the EU (**Geiger, Frosio, Bulayenko, 2018**).

- Replace the opt-out mechanism of Article 4 by a TDM exception for creative purposes coupled with a **statutory remuneration** to the benefit of authors only, in coherence with a proposal tabled in the past of a statutory remuneration for creative uses (**Geiger, 2017; Geiger 2018**)



The above takes on previous statutory remuneration proposals

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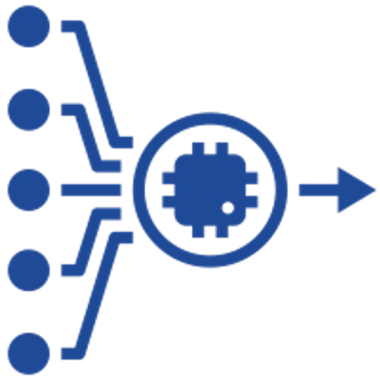
Output-oriented AI levy system: M. Senftleben, 2023

- Statutory remuneration would not be on the TDM use of protected works for AI machine learning purposes, but the *literary and artistic output* of generative AI systems serves as a reference point for a legal obligation to pay remuneration.
- This can be applied in a uniform manner to all providers of generative AI systems in the EU. *Of advantage when AI trained outside of the EU.*
- Theory of the domain public payant
- **Input-based remuneration system** carries however significant advantage: legal certainty to AI developers; compatible with the European tradition of remunerated exceptions and established practice and case law with regard to the distribution rules in favor of creators of these kind of remunerations via collective management organizations; the idea of the domaine public payant, might not benefit from a broad support.



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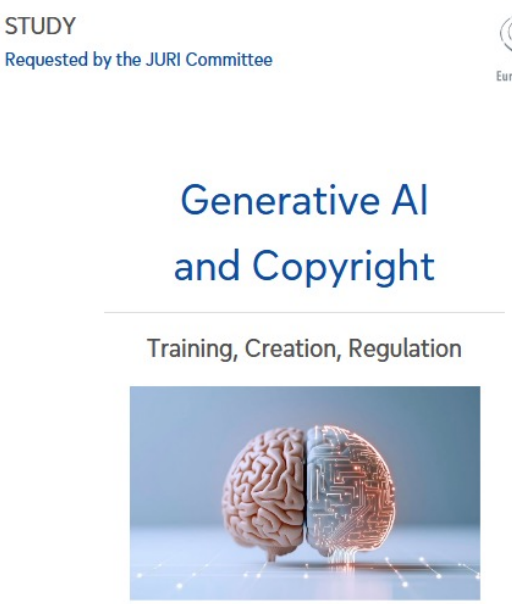

Nicola Lucchi, Study for the JURI Committee, July 2025

Propose an opt-in licensing model, but admits "that the long-term viability of individualized licensing across billions of works is limited. As discussed, **a statutory licensing scheme or collective remuneration mechanism may ultimately provide a more scalable and equitable model**" (p. 122).

Advantage of a remuneration right on the input/ training

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- Legalizes the training of Generative AI, established legal security, secure an EU wide approach
- Infringing outputs (copy of parts of protected work) can still be prosecuted, so that GenAI can not abused to generate identical works and compete directly with protected works
- General copyright principles apply: adaptation right when the result is too close to original, parody and pastiche can legitimate certain uses.
- See also Code of Practice for General-Purpose AI Models Copyright Chapter, 10 July 2025 (chaired by A. Peukert & C. Castets-Renard): Measure 1.4 requires model providers “to implement appropriate technical safeguards to prevent their models from generating outputs that reproduce training content in a copyright-infringing manner”.

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CONCLUSION AND OUTLOOK

Human Rights Framework for Generative A.I.:
Protection for Human Creativity as Point of Reference leads to

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Right to Science and Culture

Freedom of Expression

1.) Right to train and use A.I., but …

A.I. as a technical tool to serve human creators and to secure scientific and cultural advancement and new creative practices

Generative A.I.

2.) … only with adequate remuneration: implementation of a statutory remuneration for ML by commercial AI system

Revision of Art. 3 (broadening) and 4 CDSM (replace opt out by remuneration right; Limited right to oppose the use based on moral rights claim (offensive, discriminatory, problematic harm to the integrity of the information).

Protection of Material and Moral interests of creators

There needs to be a captain in the Copyright Ship …

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….to secure our fundamental values are reflected in the legal framework (protection of both creativity and human creators): A role for the AI office (Geiger/ Iaia, 2024)? A future European Copyright Agency (Geiger/ Mangal 2022; Geiger/ Jütte, 2024)?

The EUIPO (EUIPO Study, May 2025), announced the creation of a "Copyright Knowledge Center" and underlines "a role for public authorities in providing technical support for implementing and administering databases of TDM reservations and raising awareness on measures and good practices to mitigate potential infringing output".

A reflection on the Copyright governance needs to be urgently started!

See C. Geiger and V. Iaia, "Is There a Captain in the Ship? The EU Copyright Regulator's Quest in the Generative AI Era", ILEO Research Paper 2025 (forthcoming)

Digital constitutionalism as theoretical framework for both the revision of copyright legal framework and its governance structure

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… The increasing relevance of the private sector in the digital environment has led to a situation where **digital spaces are mostly subject to the governance of private actors designing standards and procedures** competing with the protection ensured by traditional constitutional rights and safeguards.”

Giovanni De Gregorio, 2022

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Giovanni De Gregorio, 2022

Further Readings

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