DEUTSCHER FOTORAT

Generative AI in conflict with human creativity
Eight demands of the German Photographic Council

On August 2, the next stage of the European AI Act came into force, imposing new requirements on providers of AI systems. At the same time, following a months-long consultation process, the European Code of Practice was published, which is intended to make it easier for signatory companies to comply with the rules.

From the perspective of the creators whose works are used by AI companies without permission and without compensation for the development of generative systems, these regulations are disappointing.

The fundamental conflict between the protection of intellectual property and the boundless hunger for data of AI developers is intensifying. Industry representatives have made it clear that they have no interest whatsoever in allowing the suppliers of training material for their AI systems a share in the revenues generated by their platforms.

The coming months will be crucial in finally taking steps to close loopholes in the legislation and end the expropriation of creative artists in a legal grey area during the upcoming review of the current European directive on copyright in the digital single market (CDSM Directive).

The coalition agreement of the new German government promises a "fair balance of interests for all stakeholders." This must not remain an empty promise. The German Photographic Council therefore calls for:

1. Intellectual property must be legally protected in AI training

AI companies argue that the collection and use of all accessible data is covered by permission for "text and data mining" (TDM) and refer to Article 4 of the CDSM Directive and Section 44b of the Copyright Act. However, when these regulations came into force, the possibilities of generative AI systems were in their infancy and only known to specialists.

When Directive (EU) 2019/790 of the European Parliament (CDSM Directive) was adopted in 2019 and transposed into German law in 2021, public interest focused on the controversial "upload filters." The fact that regulations on text and data mining (TDM) were introduced at the same time went largely unnoticed.

More and more lawyers are expressing doubts that the training of generative AI is covered by the TDM regulations at all.

It is high time to adapt copyright law at the European level. The review of the CDSM Directive planned for 2026 offers an opportunity to do so, and we call on the German government to advocate for a reform in the EU Commission and the Council of the EU that clarifies that the development of commercial generative AI systems is not covered by the exceptions of the TDM regulations.

The existing legal uncertainties are leading to years of legal disputes across many instances in numerous countries. And it is always the authors who have to fight for their rights in lengthy and costly individual cases. Providers of AI systems, which already generate billions in revenue from paid services, invoke regulations that were originally intended for research purposes, such as the analysis of medical data.

In addition, structures have emerged in recent years in which small companies or non-profit organisations take on the task of creating enormous data collections, which are then used by large tech companies to develop their products. The new Code of Practice also approves this practice and largely relieves companies of the responsibility of verifying the legality of the data sets. Such loopholes must be closed.

Copyright law must regulate the use of protected content in AI training as a new type of use. Copyright holders must be able to exercise their rights, regardless of the legal jurisdiction in which the models were developed, as soon as these AI models are offered in their legal system. This is already required by the European Union's AI Act.

2. AI companies must remunerate creative professionals appropriately

The economic impact of using protected works to train AI systems goes far beyond that of previously known types of use. In many areas, generative AI will completely replace the activity of creative professionals, thereby threatening their economic existence. Yet it was their decades of work that made the development of these systems possible in the first place. These far-reaching consequences must be taken into account when considering new remuneration models that must be “appropriate” for those affected under copyright law.

Remuneration must be provided both for the use of works for AI training and for the output of AI generators. AI providers and platforms must be obliged to compensate creators fairly. This is not just about future uses. All authors whose works have been exploited as AI training material without their knowledge and consent must be compensated. There must be no amnesty-like solution for the models currently active on the market, as is currently being considered by the EU Commission.

Given the vast amount of capital invested in software and hardware development, it is absurd for AI companies to demand that they be allowed to use the raw materials of all generative models—photos, images, texts, films, music—free of charge for their products.

Without human creativity, there can be no generative AI. It should therefore be in the long-term interest of AI companies to ensure that creative work continues to be respected and that creative people can earn a living from it.

3. AI training may only proceed with the active consent of the authors.

It should not be up to creators to try to protect their works from being used in AI training and to secure the rights to which they are clearly entitled by law through “opt-out” provisions. The legal requirements for such reservations are currently unclear. The technical requirements involve considerable effort on the part of creators in some cases, and it is doubtful whether such reservations will actually be respected.

We therefore call for a legal solution that only allows AI training with creative works with the express permission of the rights holders. This so-called opt-in also makes it possible to agree on fair licensing terms for use in AI training.

If the opt-out provisions of the current laws remain in place, whereby creators must declare a reservation of use against the exploitation of their works for AI training, the creators' declaration of intent must be respected by AI providers in every recognizable form. This includes text passages in the terms of use of websites as well as metadata embedded in digital representations of their works.

Declaring such a reservation of use must not unilaterally burden creators with the effort and costs of technical solutions. A digital catalog of works operated by government agencies such as the European Union Intellectual Property Office (EUIPO) would be helpful, for example. Alternatively,

such a directory could also be designed as an opt-in registry for AI training.

Approaches to legalize the exploitation of works through comprehensive collective licenses must not deprive authors of the possibility to prohibit the use of their works for AI training on an individual basis.

4. AI training must be transparent

In order to effectively control the use of copyrighted works, the data and link collections used for AI training must be publicly accessible without technical barriers.

Providers of generative AI systems resist disclosing their sources, arguing that this would violate trade secrets. It is absurd that those who demand free access to all works ever published online claim protection for their trade secrets once they have incorporated public works for their own purposes.

Technical arguments against disclosing the training data used in a work-based form (not just in categories) have long been refuted. Detailed source documentation and information for AI systems is technically possible and, in many cases, trivial. For example, the controversial data collections of LAION e.V., which serve as a basis for many developers, are publicly available as open source. This catalogue contains almost 6 billion images. If transparency is possible here, it must also be possible elsewhere.

The Code of Practice only obliges AI companies to provide general information on the origin of data, such as 'web crawling'. The 'template' for company disclosures recently presented by the EU Commission is completely inadequate. For example, AI companies are only required to provide the names of the crawlers used, the period of collection, and a list of the top 10% of all domains evaluated on the internet (maximum 1000 for SMEs). Companies are also not required to specify whether they are invoking provisions for scientific research or commercial use.

Without complete, work-by-work disclosure with specific URLs, enforcement is not possible.

5. Copyright information must not be deleted.

Copyright, licence and usage information or usage restrictions stored with the works in the embedded metadata, for example, must not be deleted.

This is already mandatory under Section 95c of the German Copyright Act (UrhG). However, this provision is generally not observed. This information is very often automatically removed when content is uploaded to websites or social media platforms.

In 2016, the Hamburg Regional Court ruled in favour of a photographer who had sued Facebook for this practice.

The implementation of Section 95c UrhG must be secured by liability and damages provisions. With a right of collective action for copyright issues or through the possibility of issuing warnings, the law could finally be enforced.

All measures necessary to preserve copyright and ensure the credibility of photography must be implemented in such a way that AI companies and professional users incur liability risks if they violate the rules.

We demand that measures to protect copyright be formulated as unambiguous and enforceable obligations, similar to measures in product liability. The destruction of copyright information and the concealment of the origin of training data must not be treated as a legal trifle. Existing laws must also be enforced.

6. The difference between authentic photography and AI images must remain discerniblen

A clear distinction must be made:

- Does a photograph authentically reproduce what happened in reality?
- Has a photograph been manipulated or edited in such a way that the original image content is no longer accurately represented?
- Is it a photorealistic generated image that was not created by a photographic process?

AI-generated images are by now visually indistinguishable from authentic photographs. They are already being used in a variety of ways for manipulation and fraud.

As a result, the evidential value of photographs is being called into question, not only in individual cases but in principle. Without effective countermeasures, these developments will jeopardise democracy and our fundamental liberal order.

The German Photographic Council warned against the use of AI images in reporting as early as 2023.

AI-generated images and other AI works must be labelled as such. In addition, there must also be standards for labelling authentic photographs and for ensuring this authenticity.

Suitable technical frameworks already exists. Legislators are called upon to find regulations that are not based on an abstract pursuit of legal certainty, as is unfortunately evident in many of today's data protection regulations. What is needed are practical approaches that provide clear guidance to media users.

Article 50 of the European AI Act requires AI-generated content to be labelled from August 2026, but it is currently completely unclear how these labels are to be implemented in practice and who is responsible for this. In terms of content, the labelling of ‘deep fakes’ is required by ‘operators’ of services. All these terms leave considerable room for interpretation as to what type of content will have to be labelled in which context of use.

As AI tools are increasingly being integrated into the most common image editing software, there is a risk that regulations to distinguish between authentic photos and images generated in part with the help of AI will either be extremely complex or remain largely ineffective due to overly general wording.

We therefore call on media companies and online platforms to actively work together to create clear standards for dealing with AI-generated images and to communicate these to their users. One form of transparency could, for example, be to exclude any use of AI images in a journalistic context or to make authentic photos and illustrative representations clearly distinguishable through the use of clearly differentiated visual language.

7. The rights of authors must not be a negotiable commodity.

Even though this is currently ruled out in official statements, there is a significant risk that copyright and other provisions of European AI regulation will be used as bargaining chips in the struggle for trade agreements, particularly with the confrontational US government. Industry representatives and politicians are repeatedly calling for parts of the AI Act to be withdrawn or suspended.

The desire to protect intellectual property must not be demonised as anti-progress. In the current debate, the impression is often given that regulation hinders innovation and puts countries at a competitive disadvantage. The opposite is true. Europe has the opportunity to create incentives for new business models through fair market rules. Those who, in line with the thinking of the governments in the US and China, subordinate everything to the interests of a few corporations in a cut-throat competitive environment are wasting the opportunity to gain a real competitive advantage.

8. European regulatory procedures must be transparent and democratic.

The consultation process for the European Code of Practice for the AI Act has revealed dramatic shortcomings. Despite months of consultations involving considerable effort, there can be no claim that a fair democratic decision-making process has taken place. The mammoth procedure involving over 1400 stakeholders was clearly dominated by industry lobbyists. Over 60% of participants came from their circles, with most of those listed as 'other industry representatives' having no clear affiliation to a specific company. Representatives of rights holders, on the other hand, made up only about one tenth of the participants.

The working group leaders were appointed according to a non-transparent process and came largely from US research institutions with close ties to AI providers.

In addition, industry representatives were able to participate in non-public discussion rounds on the drafting of the guidelines. Their claims that many regulatory approaches were technically unfeasible were not questioned, but in many cases led to the watering down of the proposed regulations. Civil society organisations, on the other hand, were only able to review the current versions in online meetings under considerable time pressure.

For the upcoming debates on the reform of the CDSM guidelines and a possible reform of the AI Act, processes and framework conditions must be created that enable the fair participation of all stakeholders.

The future of generative AI systems must not be left under the sole control of a few corporations in the US and China. Weakening or suspending copyright will not strengthen European AI companies, but will devalue the treasure trove of digital works that the European creative industry has produced.

Contact: Dr. Jurgen Scriba • juergen.scriba@deutscher-fotorat.de • +49 171 5421850

Links to relevant publications and statements on artificial intelligence and copyright

Interdisciplinary study by Prof. Tim W. Dornis, und Prof. Sebastian Stober (2024): „Urheberrecht und Training generativer KI-Modelle - technologische und juristische Grundlagen.“ (Copyright law & training of generative AI – technological and legal foundations)

English executive summary:
https://urheber.info/diskurs/executive-summary-english

The study commissioned by the Copyright Initiative proves that:

- Generative AI training does not fall under the ‘text and data mining’ (TDM) exception of the European Copyright Directive..
- Numerous unauthorised reproductions and copyright infringements take place during training.
- The provision of generative AI systems on the European market could infringe the right of public access.

https://www.nomos-shop.de/de/p/urheberrecht-und-training-generativer-ki-modelle-gr-978-3-7560-2305-9
English abstract:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4946214

Prof. Dr. Sebastian Stober (2025-02-28): „Possibilities of Source Documentation and Disclosure for Generative AI Systems“

In this article, Stober examines whether and how providers of generative AI systems can document their training and reference sources in detail.

> „Yes, it is technically possible and in many cases – especially for web sources – trivial to document sources and make them available for disclosure“

(DE) https://papers.ssrn.com/abstract=5165182
(EN) https://papers.ssrn.com/abstract=5165118

„Copyright and Generative AI“: Opinion of the European Copyright Society (January 2025)

The ECS, an association of renowned lawyers, points out legal uncertainties and unresolved issues that exist in the development of generative AI under the 2019 CDSM Directive and the 2024 AI Act:

- Determining the scope of the exception for text and data analysis (TDM)
- The content of the AI Act's obligation regarding legal reservations
- The scope and modalities of the transparency obligation laid down in the AI Act
- The privileges for research and open-source models
- The coordination between the CDSM Directive and the AI Act
- he appropriate remuneration of authors and performers

https://europeancopyrightsociety.org/wp-content/uploads/2025/02/ecs_opinion_genai_january2025.pdf

Study by Prof. Nicola Lucchi requested by the JURI Committee of the European Parliament (July 2025)

The study comes to five key conclusions:

- The current EU exemption for text and data mining (TDM) was not designed for the expressive and synthetic nature of generative AI training, and its application to such systems risks distorting the purpose and limits of EU copyright exceptions.
- Fully machine-generated results should remain unprotected by copyright. AI-assisted works require harmonised protection criteria.
- A statutory remuneration scheme is essential to close the growing value gap between creators and AI developers.
- The current fragmented governance landscape needs more coherent, cross-sectoral institutional measures.
- Without timely reforms, the EU risks legal uncertainty, market concentration and cultural homogenisation.

> „The primary challenge today is not technological innovation, but the instrumental reinterpretation of legal principles that undermines their coherence. The proper response is not to make copyright law fit AI, but to ensure that AI development respects the core legal and policy principles of EU copyright, including authorship, originality, and fair remuneration."

https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU(2025)774095_EN.pdf

Draft Report 2025/2058(INI) by Rapporteur Axel Voss for the Committee on Legal Affairs of the European Parliament (2025-06-27)
"On Copyright and Generative Artificial Intelligence – Opportunities and Challenges"

The report emphasises that the current legal framework in the EU is insufficient to address the challenges posed by generative AI. It calls for:

- A timely review of the existing legal framework, in particular its impact on competition conditions.
- A clear decision on remuneration mechanisms to ensure that authors are fairly remunerated when their works are used for AI training purposes.
- Swift action – The report urges immediate action rather than waiting for the review of the Copyright Directive scheduled for 2026.

https://www.europarl.europa.eu/doceo/document/JURI-PR-775433_EN.pdf

Joint statement regarding the AI Act implementation measures adopted by the European Commission (2025-07-30)

A broad coalition of European rights holders' organisations has criticised the EU Commission's Code of Practice on the Use of AI in the field of law enforcement, the AI Guidelines and the template for the disclosure of a sufficiently detailed summary of training data under Article 53 of the EU AI Act.

https://gema-politik.de/wp-content/uploads/2025/07/Joint-statement-AI-Act-Implementation-Package-30-July-2025_.pdf

Open letter to Executive Vice-President of the European Commission for Tech Sovereignty, Security and Democracy (2025-04-25):

In the open letter, numerous associations on behalf of European creative professionals demand:

- Complete transparency regarding all works, services and performances that have been and will be used to train generative AI models and for other purposes.
- Fair remuneration for the use of our content.
- Consistent enforcement of existing copyright laws – including against global tech companies.
- Involvement of the cultural, creative and media industries in all regulatory processes relating to AI governance.

https://creators-for-europe-united.eu