

IFPI Response to the EU Consultation on Competition in Virtual Worlds and Generative Artificial Intelligence

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IFPI is the voice of the recording industry worldwide, representing over 8,000 record company members across the globe. We work to promote the value of recorded music, campaign for the rights of record producers and support our members' efforts to expand licensed uses of recorded music around the world.¹

Over time, the recording industry has proven its ability to adapt to the emergence of new technologies, whether by incorporating them in the production of music or by licensing music to numerous digital actors, including music download services, streaming services, user uploaded content services, social media and more.

The recording industry also embraces the opportunities arising from the development of generative artificial intelligence (AI) and immersive technologies, for the benefit of artists, the industry, and to meet the needs of consumers.

However, sustainable technological development is hampered, and digital content markets distorted, if new services are allowed to operate and grow using copyright content without licences from right holders.²

In these comments, we outline what we believe is necessary to guarantee a fair, sustainable, and competitive market for generative AI, which, in turn, will drive competitiveness, investment, and consumer interests. In simple terms, robust adherence to EU copyright rules and the ability to exercise intellectual property rights – including copyright – through licensing and/or enforcement actions, remain critical for protecting and fostering creativity and innovation – and a key enabler of a fair and competitive European digital content market.

For the avoidance of doubt, we stress that our focus on AI in this submission should not be misunderstood as meaning that we would be unconcerned about services, operating in the virtual worlds, seeking to gain scale and unfair competitive advantage by avoiding their responsibilities under the applicable EU copyright rules.

¹ [IFPI Global Music Report 2023](#).

² Recent examples of such “parasitic” growth include peer-to-peer services in the early 2000s and, more recently, the explosive growth of user upload services (or “online content sharing service providers”).

I. RESPECT FOR INTELLECTUAL PROPERTY UNDERPINS THE DEVELOPMENT OF HEALTHY AND COMPETITIVE MARKETS FOR NEW TECHNOLOGIES AND SERVICES

Access to high quality content, such as copyright works and sound recordings, is critical for the development of meaningful AI. However, the creation of such high-quality content requires creative talent and substantial investment. Therefore, use of creative content in training AI without paying a fair market price for the use thereof undermines the creation of new works and recordings. Such parasitic business models hamper the development of a healthy marketplace for rights and the sustainable development of new technologies and services.

The music sector has embraced and continues to explore the numerous opportunities that new technologies such as AI present: as a tool for artists and labels to enhance their artistry or for streaming services to personalise users' music experience. Record labels are also actively exploring commercial opportunities in partnership with AI developers and creators.³

However, there is clear evidence of entities in the generative AI chain (e.g., compilers of training datasets, AI developers and providers) appropriating copyright protected content at scale to generate "new" content that competes with the ingested content. This is in addition to the proliferation of cloning models that let others generate synthetic content that appropriate an individual's voice, image, name and likeness without authorisation.

As an example of current illegal practices, there are certain developers of AI models that simply scrape content from the entire Internet⁴, without regard to whether or not the access to such content is lawful or possible reservations of rights expressed by right holders and/or reflected in the online service's terms of service (in accordance with Article 4 of the EU DSM Copyright Directive, 2019/790/EU).

It is even more problematic if the scraping of the copyright protected content from a service for AI training purposes is performed by the operator of the service itself or its parent company.

Training AI models on copyright protected content without first approaching the right holders to discuss licensing and then seeking to hide any use of the copyright protected content demonstrates a striking failure in accountability and transparency.

Such unauthorised and illegal practices will hamper the development of licensing markets for rights in premium content – such as commercially released music – for the purpose of developing high quality generative AI models. Widespread unlicensed use will create a serious market distortion that discriminates against developers who seek to operate lawfully, and benefits those who break applicable EU rules regarding copyright protection. In the worst case scenario, widespread illegal use will completely inhibit the creation of a fair commercial market for rights. Both scenarios will make society worse off by allowing large well-funded AI companies to use creative industries' materials without paying a fair market price, thereby reducing the future investment in and production of creative content. In the medium/long

³ <https://www.universalmusic.com/youtube-announces-ai-music-principles-and-launches-youtube-music-ai-incubator-with-artists-songwriters-and-producers-from-universal-music-group>.

⁴ <https://www.reuters.com/legal/getty-images-lawsuit-says-stability-ai-misused-photos-train-ai-2023-02-06>.

term, this will undermine consumer engagement with AI tools, which will be encouraged by compelling and high quality cultural content.

Accordingly, to support the sustainable development of generative AI in the EU, it is essential that the EU competition authorities monitor closely the activities of AI developers for any potential negative impact to the European rights licensing markets caused by unlicensed uses of copyright-protected content.

At the same time, it is essential that right holders be able to identify unlicensed uses and take appropriate licensing or enforcement actions to monetise and protect their rights. The recently agreed EU AI Act is a step in the right direction as it obliges providers of general purpose AI to put in place policies to respect copyright law and make publicly available a sufficiently detailed summary of the content used to train generative AI. The information provided by AI developers and users must be sufficiently detailed to enable right holders to identify whether their works have been used in the training of generative AI models and to exercise or enforce their rights.

II. THE EU CAN BECOME A GLOBAL LEADER IN NEW TECHNOLOGIES AND SERVICES BY CREATING A SAFE AND PREDICTABLE REGULATORY FRAMEWORK, AND SUPPORTING A FAIR AND COMPETITIVE EUROPEAN INTERNAL MARKET

The international dimension and its impact on the global competitiveness of EU companies developing new technologies, including those related to AI, is crucial.

However, ensuring international competitiveness must not be achieved at the expense of the European creative sectors and need not be. Supporting the sustainable development of technology and the robust protection of copyright are complementary, not mutually exclusive, goals. Indeed, the ability for right holders to license and, if necessary, to enforce their rights is not a barrier to the development of a competitive AI market. Rather, a robust intellectual property rights framework is a necessary condition for a healthy, sustainable market and ensuring a level playing field between the emerging technologies and the creators and producers of the protected content. In the absence of effective copyright protection in AI environments, those who create and produce new content would be disincentivised from making future investments.

We therefore welcome the reassurance contained in the preamble of the EU AI Act that:

“providers of general purpose AI models should put in place a policy to respect Union law on copyright and related rights, in particular to identify and respect the reservations of rights expressed by rightholders pursuant to Article 4(3) of Directive (EU) 2019/790. Any provider placing a general purpose AI model on the EU market should comply with this obligation, regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of these general purpose AI models take place. This is necessary to ensure a level playing field among providers of general purpose AI

models where no provider should be able to gain a competitive advantage in the EU market by applying lower copyright standards than those provided in the Union.”⁵

Further, to ensure a level playing field globally, the EU should promote the same standards of copyright protection in AI among its international partners in bilateral and multilateral fora such as in the G7 Hiroshima AI process and in the context of the existing EU-Japan FTA, EU-Singapore FTA or the EU-US TTC.

The concerns regarding the unfettered unauthorised use of copyright works and other subject matter are shared across sectors globally, from music to sport, as demonstrated by the wide variety of organisations that have signed up to the AI principles of the global Human Artistry Campaign (www.humanartistrycampaign.com), and more recently in the EU in the context of the negotiations of the AI Act.⁶

Securing the right to use high quality content for training should represent an additional element of competition between AI model developers/operators. On the contrary, the abuse of copyright by technology companies scraping copyrighted content from the internet without permission or payment represents a distortion, or at its worst an elimination, of competition in the upstream markets for essential inputs for the development of AI systems.

III. UNLAWFUL USE OF AI-GENERATED CONTENT THREATENS THE PROPER FUNCTIONING OF THE DIGITAL MUSIC MARKET

A separate but related issue faced by the music industry is the large-scale availability of AI-generated content on music streaming services that is bombarded with artificially generated plays to generate royalties that would otherwise be paid out to human artists. Spotify reported that it removed tens of thousands of these tracks from its service last year.⁷

Moreover, this situation could be severely compounded if streaming services were to become flooded with illegal clones using genuine artists’ voices, images, names and likenesses. Genuine artists could find themselves competing for a share of revenue against illegal clones or unauthorised adaptations of existing tracks, and third parties passing off material as their own creative output.

To avoid distorting the digital music market, it is important that services therefore take responsibility to prevent the making available of unlawful content, including both content generated by AI models trained unlawfully and content that appropriates genuine artists’ personalities, as well as the manipulation of such content through artificial plays.

⁵ Recital 60j as per the numbering of the AI Act preamble submitted for approval to COREPER in doc. 5662/24 dated 26 January 2024.

⁶ [EU AI Act Joint statement from European creators and rightsholders - IFPI.](#)

⁷ [AI’s disruptive forces are rapidly reshaping the music industry | Financial Times \(ft.com\)](#); [Spotify ejects thousands of AI-made songs in purge of fake streams | Financial Times \(ft.com\)](#).

IV. THE EU MUST ENSURE FREE MARKET CONDITIONS FOR LICENSING COPYRIGHT CONTENT FOR AI

The most effective way to ensure the healthy development of European AI and other frontier technologies is to ensure that right holders and technology companies can operate in free and competitive markets. While appropriate levels of regulation are necessary to establish the institutional foundations for fair and functioning markets (such as competition law and ensuring that parties can enforce their statutory or contractual rights), right holders should be allowed to freely choose whether and under what conditions to license their content, parties must be allowed to freely negotiate the commercial terms of licences, and right holders must be free to choose whether to enter individual licensing agreements themselves or, when they so choose, mandate collective rights management organisations to license their rights on their behalf.

Initiatives such as a “single market of data” or any similar proposals that seek to regulate the European digital content market should be rejected. They would effectively force the European creative sectors to subsidise AI developers that use works to produce competing content, and/or create new business opportunities on the back of creative content. That would be a short-sighted industrial policy that undermines the establishment of competitive and sustainable markets in the EU.

Policy choices that remove competition or distort the market – such as compulsory licences, mandatory collective licensing, content quotas, or copyright exceptions or limitations, without evidence of market failure – must be avoided.