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From Wall to Compass: Modernising EU Copyright in the Generative AI Era[1]

Enrico Bonadio – City St. George's, University of London
Oreste Pollicino – Founder and managing partner at Pollicino AIdvisory

Introduction

The boom of generative artificial intelligence (AI) has dragged copyright into an unexpected spotlight. The relationship between AI and this intellectual property (IP) right is now at the centre of heated policy debates, lawsuits,[2] and newspaper headlines.[3] The issue is not only economic; it touches the foundations of how societies understand creativity, authorship and the circulation of knowledge.

Europe, with the AI Act[4] on one hand and its pre-AI-boom copyright directives on the other,[5] is trying to draw boundaries. But, as often happens in the digital field, boundaries are porous. A rule is written today, while practice tomorrow has already found ways around it.[6] The crucial dilemma is simple to state but difficult to solve: how to protect and further promote human creators without paralysing innovation?

This article suggests that copyright should no longer be read only as a defensive right aimed at protecting and promoting human creativity (of course, this has been the most important objective that copyright regimes have pursued since the first copyright law in the world, the Statute of Anne of 1710).[7] Instead, we embrace here a balanced framework that permits AI platforms measured latitude in accessing copyrighted materials for training purposes, while simultaneously establishing safeguards through licensing mechanisms, transparency requirements, and fair remuneration systems to ensure creators maintain economic sustainability and proper attribution for their contributions. In other words, we suggest that the

[1] This policy brief has been previously submitted for publication in European Intellectual Property Review.
[2] There are numerous lawsuits pending both in Europe and US, predominantly challenging the use of copyrighted material in training generative AI. Such actions have been started by a variety of copyright owners including writers, newspapers, visual artists, music labels and movie companies. As far as Europe is concerned, see for example *GEMA vs. Suno Inc.* filed with the Munich Regional Court on 21 January 2025. Some rulings have already been issued, e.g. in Hamburg Regional Court, Germany [2024] *Robert Kneschke v. LAION e.V.*, Case No. 310 O 227/23; Amsterdam District Court (Rechtbank Amsterdam), *DPG Media B.V., Mediahuis Netherlands B.V., and NRC Media B.V. v. Knowledge Exchange B.V.*, ECLI:NL:RBAMS:2024:6563, judgment of 30 October 2024; Municipal Court of Appeals, Hungary, Anonymous publisher v. Anonymous provider of an online search engine, judgment of 3 December 2024.
[3] See for example Martin Wolf, The Copyright War between the AI Industry and Creatives, Financial Times, 23 June 2025; Christine Mui, Big Music Goes After AI, Politico, 7 February 2024.
[4] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence.
[5] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (DSM Directive).
[6] Some Members of the European Parliament (e.g., Axel Voss) raised concerns about applying existing directives to AI (especially the DSM Directive), as it is argued that these were not initially designed for the scale of use seen in AI model training.
[7] Statute of Anne (1710), an Act of the Parliament of Great Britain, for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned.

copyright system should not be considered a 'wall', but a 'compass'. It should become a guiding tool—flexible, adaptive, constitutional in nature, acknowledging the need for a regulatory framework to also incentivise innovation and facilitate new technologies such as AI, alongside traditional creative industries. The aim is eventually to respond to new technologies and balance creators' rights with access and transformative uses that drive innovation.

A Tradition Under Pressure

Copyright in Europe is rooted in the romantic vision of the author as an individual genius.[8] That model, fragile already in the late 20th century, risks now collapsing under the pressure of machines able to imitate, remix and generate apparently new works. Lawyers and judges wonder: when an AI system writes a song or a short story or generates an image, is there an author in the legal sense? This is the 'output' question. The European answer, at least for now, is clear: only a human can be an author.[9] But borderline situations multiply—what if a human provides only prompts while the machine generates the rest? Is that enough for originality? There is no stable answer.[10] And this instability is not only a legal puzzle; it reflects a deeper question about human identity in the algorithmic era.

Also, and perhaps more importantly, training datasets are built on enormous archives of human creations. Creative machines thus ingest vast quantities of human-created material when learning, drawing from sources such as musical works, books, photos, articles, social platforms, and videos. These diverse works act as the essential input that fuels the development and functioning of AI technologies.[11] And often this happens without explicit consent from right owners, sometimes in a legal grey area. This is the 'input' question – the burning policy issue of our times and the principal focus of this article. According to several commentators, the paradox would be evident: the more machines learn from human creativity, especially where the fruits of such creativity are copyright protected, the more they risk emptying its economic and symbolic value.[12]

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[8] Peter Jaszi, Toward a Theory of Copyright: The Metamorphoses of 'Authorship' (1991/2) Duke Law Journal, pp. 455–502.

[9] EU and US copyright law require that protected works are original and reflect a human author's personality or creative choices. As far as the EU is concerned, see C-5/08, *Infopaq International A/S v Danske DagbladesForening* (*Infopaq I*); Case C-403/08, *Football Association Premier League Ltd (FAPL) v QC Leisure*; C-145/10 *Eva-Maria Painer v Standard Verlags GmbH and Others*, para 88. But as mentioned AI-generated works generally lack the human authorship necessary for copyright, though works made with AI as an assistive tool may be protected if expressive elements are decided by a human (as recently confirmed by the US Copyright Office in several cases). This limitation, however, applies only to copyright in the strict sense and does not extend to related rights such as the EU *sui generis* database right, where legal persons can be offered rights as "makers".

[10] As far as the US is concerned, see Mark Lemley, How Generative AI Turns Copyright Law Upside Down (2024) 25 Columbia Science & Technology Law Review (arguing that in the era of generative AI, creative significance increasingly resides in the crafting of prompts, but current copyright law does not protect prompts themselves; thus, most AI-generated outputs and their underlying instructions remain outside copyright protection).

[11] Ben Sobel, Artificial Intelligence's Fair Use Crisis *(2017)* 41 **Colum. J.L. & Arts** 45.

[12] Idem. As far as the European scenario is concerned, the vast discussions on how AI affects copyright law, especially from an AI input perspective, has produced several academic studies. See amongst the many works,

For industries that live and rely on creativity the problem is tangible. Publishers, for example, worry that automated systems capable of summarising and rewriting entire novels may undermine their business. Some of these concerns underpin the on-going *Like Company v Google Ireland Limited* dispute,[13] referred by the Budapest Regional Court in April 2025. While the case primarily concerns the press publishers' *sui generis* right under Article 15 of the DSM Directive, it will also test whether Gemini's outputs infringe traditional copyright under Articles 2 (right of reproduction) and 3 (right of communication to the public) of the InfoSoc Directive;[14] or whether it instead meets the requirement for the text-and-data mining (TDM) exception under Article 4 of the former directive. Record labels also face AI-generated tracks on streaming platforms, and filmmakers worryingly see machines producing synthetic voices and even digital actors.

But AI is not only a rival to the creative industries; it can also be a partner. It helps in translation, adaptation, marketing, and may open new markets that were unreachable before. For example, AI streamlines complex processes such as editing, background removal, and colour correction, freeing up time for innovation. It also helps identify trends, personalise content, and democratise creative tools, making creative fields more inclusive and efficient.[15] As reminded by the UK government in its recent consultation on Copyright and AI, "AI can be used to accelerate innovation and enhance creative productivity in a range of ways, just as creative content helps drive AI development. Musicians and artists often use AI and other forms of technical innovation in their work. This means these sectors are closely linked and often need to work together in partnership".[16]

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the study requested by the JURI Committee of the European Parliament (finished July 2025), where concrete policy recommendations are suggested. The study has been written by Nicola Lucchi and is available at https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU(2025)774095_EN.pdf. See also Tim Dornis, Generative AI, Reproductions Inside the Model, and the Making Available to the Public (2025) IIC 56, pp. 909–938 (2025); Martin Senftleben, Win-Win: How to Remove Copyright Obstacles to AI Training While Ensuring Author Remuneration (and Why the European AI Act Fails to Do the Magic) (2025) Chicago-Kent Law Review, Volume 100, pp. 7-55; Christophe Geiger and Vincenzo Iaia, The Forgotten Creator: Towards a Statutory Remuneration Right for Machine Learning of Generative AI (2025) Computer Law & Security Review, Volume 52; Lennartz, J., Kraetzig, V., Forbidden Fruits? Artistic Creation in the AI Copyright War (2025) IIC 56, pp. 241–245; Eleonora Rosati, Copyright Exceptions and Fair Use Defences for AI Training Done for 'Research' and 'Learning', or the Inescapable Licensing Horizon (2025) European Journal of Risk Regulation; Begona Gonzalez Otero, Machine Learning Models Under the Copyright Microscope: Is EU Copyright Fit for Purpose? (2021) GRUR International, Volume 70, Issue 11, pp. 1043–1055; Andres Guadamuz, The EU's Artificial Intelligence Act and Copyright (2024) Journal of World Intellectual Property. As far as the US is concerned, see amongst many works, Edward Lee, Fair Use and the Origin of AI Training, 62 Hous. L. Rev. (forthcoming 2025).

[13] C-250/25, *Like Company v Google Ireland Limited*, request for a preliminary ruling from the Budapest Környéki Törvényszék (Hungary), lodged on 3 April 2025.

[14] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

[15] On the benefits of AI for creative industries, see Bill Mansfield, Revolutionising Creativity: How Artificial Intelligence is Empowering Creatives, Bristol Creative Industries Blog, 21st January 2025, available at https://bristolcreativeindustries.com/revolutionising-creativity-how-artificial-intelligence-is-empowering-creatives/.

[16] Paragraph 31 of 'Copyright and AI: Consultation', presented to Parliament by the Secretary of State for Science, Innovation and Technology by Command of His Majesty, December 2024, available at

This double face of AI—threat and opportunity—makes the regulatory debate more delicate. As mentioned, litigation is significantly increasing, but lawsuits alone may not be able to create a sustainable model (even though they could still generate useful precedents for future decision-making). Other paths such as collective licensing, where repertoires are negotiated as a whole with AI providers, seem more pragmatic, instead. Yet obstacles remain: power is asymmetric, costs high, and international fragmentation discourages global solutions. The economic question is therefore how to sustain a creative ecosystem where authors can still live from their works, while not blocking the benefits of innovation for society at large.

Constitutional Balance

In Europe, copyright is not only property. It doesn't just preserve authors' interests. It should also promote cultural diversity and ensure pluralism. This dual nature of copyright is reflected in the EU Charter of Fundamental Rights,[17] whose Article 17(2) provides that IP "shall be protected", thus elevating it to a fundamental right alongside personal and real property. Yet, the Charter also requires EU bodies to balance creators' protection with other rights and interests.[18] And the CJEU has insisted for many years on the need to balance copyright with freedom of expression, education, and access to information. For example, in *Scarlet* and *UPC Telekabel*, it underlined that "there is nothing whatsoever in the wording of Article 17(2) to suggest that the right to intellectual property is inviolable and must for that reason be absolutely protected".[19] Then, in *Spiegel Online v Beck*,[20] it emphasised that copyright exceptions must be interpreted in a way that takes full account of fundamental rights under the EU Charter, specifically freedom of expression and information pursuant to Article 11. And more broadly, in *Poland v Parliament and Council*,[21] the CJEU confirmed that IP rights are not inviolable,

https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence.

[17] Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 (Charter).

[18] Christina Angelopoulos, Annabel Brody, Wouter Hins, Bernt Hugenholtz, Patrick Leerssen, Thomas Margoni, Tarlach McGonagle, Ot van Daalen and Joris van Hoboken, Study of Fundamental Rights Limitations for Online Enforcement through Self-Regulation (IViR, University of Amsterdam 2017), available at https://www.ivir.nl/publicaties/download/study_fundamental_rights_limitations.pdf.

[19] C-70/10, *Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)*, para 43 (the case concerned whether an internet service provider could be required to install a general filtering system to block unlawful music file sharing; the CJEU rejected such obligation on grounds of protection of fundamental rights including the right to privacy, free speech and the right to conduct businesses); C-314/12, *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH and Wega Filmproduktionsgesellschaft mbH*, para 61 (this case concerned whether an Internet service provider could be ordered to block access to a website illegally streaming copyrighted films, raising questions about balancing copyright, business freedom, and information access).

[20] C-516/17, *Spiegel Online GmbH v Volker Beck* (the case concerned whether the publication by an online news portal of a manuscript and related article by German politician and human rights activist Volker Beck's, without his consent, infringed copyright or could be justified by exceptions for reporting and quotation).

[21] C-401/19, *Republic of Poland v European Parliament and Council of the European Union* (Poland challenged Article 17 of the DSM Directive, arguing that content-filtering obligations for online platforms infringed the right to freedom of expression; the CJEU upheld the provision, highlighting safeguards and balance).

noting that copyright law must include adequate safeguards that achieve a fair balance between competing rights.[22]

Generative AI complicates this balance, especially when it comes to the 'input' question. If every use of data in training is considered illegal, innovation is suffocated. But if every use is tolerated without appropriate safeguards, some creators might lose recognition. Neither extreme work. The real challenge is to design flexible rules, able to adjust over time, preserving equilibrium rather than enforcing rigid boundaries.

A balanced approach – one may say - could be found in a recent settlement proposal in the US dispute against Anthropic. In that case, Anthropic secured an interim ruling that confirmed that training is fair use and offered to settle over the creation of an internal library of pirated books.[23] This distinction ensures creators are paid for the use of their works without placing undue restrictions on legitimate innovation, offering a model for reconciling copyright with technological progress in the generative AI era.

This framework, emphasising authorised and lawfully accessed versus unauthorised data usage, may find further support in existing EU copyright law. The TDM exception under Article 4 DSM Directive provides a pathway for legitimate AI innovation by permitting the use of lawfully accessed copyrighted works for training purposes. Under this provision, commercial entities can reproduce and extract content from works to which they have lawful access—whether through subscriptions, licences, open access arrangements, or other legitimate means—without requiring additional permission from rights holders. This lawful access

[22] Other cases which have emphasised the need to find a balance between copyright protection and other competing rights are C-476/17, *Pelham GmbH v Ralf Hütter and Florian Schneider-Esleben*, and C-469/17, *Funke Medien NRW GmbH v Bundesrepublik Deutschland*. The former addressed whether music sampling without authorisation infringed copyright, examining the conflict between exclusive rights holders and freedom of artistic expression, and clarifying the application of the quotation exception. The latter concerned whether publishing government documents online without authorisation violated copyright and how copyright exceptions—specifically reporting current events—should be balanced with freedom of information and expression. All these cases collectively establish that copyright exceptions must be interpreted broadly to protect fundamental rights, that technological innovation deserves protection under freedom of expression and artistic creation, and that any interpretation of copyright law must achieve a fair balance between rights holders and users.

[23] *Bartz et al. v. Anthropic PBC*, No. 3:24-cv-05417-WHA, U.S. District Court for the Northern District of California, Settlement Agreement dated 5 September 2025. The legal action was brought in 2024 by authors Andrea Bartz, Charles Graeber, and Kirk Wallace Johnson against Anthropic, alleging that their books were used without permission to train Anthropic's AI models. Anthropic agreed to pay $1.5 billion—about $3,000 per pirated book—to authors whose works were used without authorisation to train its AI. Yet, it should be reminded that this kind of framework is context-dependent: in the US, courts have found AI training with lawfully obtained copies can qualify as "transformative", but they have not made equitable remuneration a general rule. No binding precedent says that every use is legal or illegal, as outcomes turn on fair use case law, factual circumstances, and judge-specific reasoning. In the *Bartz v. Anthropic* settlement, as mentioned, payment was part of a private agreement, not a universal rule. And in the EU, under Article 4 DSM the opt-out system enables rights holders to object, and the default permission to use works for TDM does not automatically require compensation—responses vary among member states and ongoing policy discussions stress flexibility and futureproofing rather than absolutes.

requirement ensures that copyright owners retain control over their content distribution while allowing AI developers to utilise legally obtained materials for training. As is known, the TDM exception only applies when rights holders have not explicitly opted out (e.g. through machine-readable means or contractual terms),[24] which aims at creating a balanced system that respects both innovation needs and creators' rights.

Also, a relatively permissive fair use or dealing approach for AI could help reduce bias in algorithmic creativity as strong copyright restrictions would prevent access to diverse, modern works for training data. As Amanda Levendowski suggests from an American perspective,[25] biases may indeed occur because most 20th and early 21st century creations are under copyright, which would force AI developers to train their machines with older public domain works that reflect the values and perspectives of wealthier, whiter, and more Western societies.[26] This means voices historically excluded from mainstream publication—such as women, people of colour, and LGBTQ communities—are less likely to be represented in AI datasets, reinforcing outdated social norms.[27] On the contrary, a flexible fair use or dealing regime allows AI systems broader access to copyrighted materials, which would permit training datasets to include more contemporary, diverse, and representative sources, resulting in less biased algorithmic output.[28] In other words, copyright barriers encourage AI companies to use easily available but potentially old and biased data. Furthermore, under fair use or dealing systems, AI developers could more openly disclose the materials used for training without fear of copyright litigation, promoting greater transparency and further mitigating bias.[29] In this way, using copyrighted works for AI training is crucial for creating more equitable, socially aware and thus constitutionally balanced AI regimes.

Transparency of datasets is certainly essential. It is not only a technical matter, but a democratic guarantee. Without knowledge of what feeds the machines, societies lose control over their own cultural memory. In this sense, the debate on copyright

[24] However, a current debate surrounds the practical implementation of this opt-out mechanism, particularly regarding how machine-readable reservations should be technically executed. The DSM Directive remains silent on specific technical standards, creating uncertainty about valid formats. While this technical ambiguity creates short-term legal uncertainty (as suggested by several scholars), a workable solution may eventually emerge as regulatory pressure intensifies and industry standards mature. In general, on this mechanism, amongst many papers, see Péter Mezei, The Multi-layered Regulation of Rights Reservation (Opt-out) Under EU Copyright Law and the AI Act - For the Benefit of Whom? (v3.0) (March 2025), available at https://ssrn.com/abstract=5064018; Maurizio Borghi, Bryan Khan, Riccardo Raso, Marco Ricolfi, and Antonio Vetrò, Study on the Development of Generative Artificial Intelligence from a Copyright Perspective, Nexa Center for Internet & Society, University of Turin, Commissioned by the European Union Intellectual Property Office (EUIPO), September 2024 – April 2025, available at https://nexa.polito.it/development-of-generative-ai-from-copyright-perspective/ (also recommending registries, standards, and model contracts for fair, transparent copyright management in Europe's AI sector).

[25] Amanda Levendowski, How Copyright Law Can Fix Artificial Intelligence's Implicit Bias Problem (2018) 93 Washington Law Review 579.

[26] Ibidem.

[27] Ibidem.

[28] Ibidem.

[29] Ibidem.

and AI is not marginal: it is about constitutional values at the heart of democracy. AI's reliance on copyrighted works has indeed intensified calls for transparency, since creators cannot verify whether their works have been lawfully used or if opt-out choices were respected. Moreover, transparency serves the fundamental moral right of attribution, ensuring creators receive proper credit when their works contribute to AI training datasets.[30] The EU AI Act partially addresses this point by requiring developers of general purpose AI models to publish sufficiently detailed summaries of training data, creating potential global standards.[31] But a more sustainable transparency framework could be achieved through a differentiated disclosure model: an approach which would combine publicly accessible, high-level summaries with confidential registries available to designated oversight authorities, thereby contributing further to safeguarding proprietary interests while enabling effective accountability. This layered structure reflects a proportionate regulatory design: enhancing legal certainty for creators without imposing excessive compliance costs on AI developers.[32]

Other Options

Several other instruments are on the table to guarantee a constitutional balance. One prominent idea is the introduction of a levy on AI companies that train their models with copyrighted content. Modelled on existing private copying levies under the EU InfoSoc Directive,[33] this system would establish a collective compensation fund to be managed by collecting societies, ensuring creators who are member of those societies receive fair remuneration while acknowledging the economic imperatives of AI innovation.[34] A similar outcome may also be reached by a statutory licensing scheme, mandating equitable payment while avoiding the burdens of individual negotiations.[35] These approaches recognise the practical necessity of

[30] On the intersection between AI and moral rights, see Rita Matulionyte, Can AI Infringe Moral Rights of Authors and Should We Do Anything About It: An Australian Perspective (2023) Law, Innovation and Technology.

[31] Article 53(1)(d) EU AI Act. See also Zuzanna Warso and Max Gahntz, How the EU AI Act Can Increase Transparency Around AI Training Data, 9 December 2024, available at https://www.techpolicy.press/how-the-eu-ai-act-can-increase-transparency-around-ai-training-data/.

[32] On the need to present a comprehensive multi-layered approach to AI transparency (in the specific case of healthcare), see
Anastasiya Kiseleva, Dimitris Kotzinos, Paul De Hert, Transparency of AI in Healthcare as a Multilayered System of Accountabilities: Between Legal Requirements and Technical Limitations (2022) Frontiers in Artificial Intelligence (proposing that transparency should be achieved through different levels and measures, and arguing for a system where "transparency measures should always be contextualised" based on the specific area of AI application).

[33] The private copying exception allows individuals to reproduce copyrighted works for personal use without authorisation, provided rights holders receive fair compensation. See Article 5(2)(b) InfoSoc Directive. This framework has evolved through CJEU jurisprudence to address the digital era challenges, particularly regarding cloud storage and technological neutrality. See
C-433/20 *Austro-Mechana v. Strato AG* (ruling that the private copying exception covers reproductions made in cloud storage spaces); and C-265/16 *VCAST* (making it clear that cloud-based copying services conducted by third parties can fall under the private copying exception, provided certain conditions are met).

[34] Martin Senftleben, Generative AI and Author Remuneration (2023) IIC.

[35] Geiger and Iaia, above fn. 12, advocating for a statutory license scheme that would impose a general payment obligation on providers of generative AI systems for using copyrighted works in machine learning processes. However, their approach differs from Senftleben's (above fn. 34): while Senftleben proposes an output-based

using vast, copyright-rich datasets and reframe compensation as an ethical duty integral to responsible AI governance rather than a mere legal formality.

Meanwhile, regulatory sandboxes under the EU AI Act may provide controlled environments where innovative licensing models and watermarking technologies can be tested without immediate legal risk.[36] These sandboxes are due to enable experimentation with novel copyright clearance mechanisms, content authentication tools, and provenance tracking systems while allowing regulators to understand emerging technologies and developers to ensure compliance.

Voluntary collective licensing frameworks are also emerging as proposed solutions, offering (at least in theory) comprehensive access to entire repertoires rather than endless individual lawsuits. The Nordic Music Collective Management Organisations have proposed this approach, establishing joint principles requiring licensing at three stages—AI training, service provision, and output utilisation—creating efficient pathways for both rights clearance and fair remuneration.[37] Similarly, the UK's Copyright Licensing Agency, Authors' Licensing and Collecting Society, and Publishers' Licensing Services are developing collective licensing schemes for text-based works, recognising that traditional individual negotiations are impractical for large-scale AI training datasets.[38] Yet, these collective licensing initiatives face significant practical challenges regarding territorial scope and global rights clearance. While collecting societies operate extensive international networks through reciprocal representation agreements that theoretically provide worldwide repertoire coverage, the territorial nature of copyright law creates substantial limitations for AI training purposes. Unlike traditional licensing scenarios where territorial boundaries align with service provision, AI training datasets require comprehensive global rights clearance from the outset, as models cannot be easily segmented by jurisdiction once trained.

It is also important to correctly identify when it is appropriate to apply copyright licensing in AI development. While the collective licensing schemes mentioned

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levy (charging AI companies based on generated content that substitutes human works), Geiger and Iaia call for an input-based statutory remuneration tied directly to the machine learning use of copyrighted training data. They ground their proposal in fundamental rights analysis, arguing that such a "permitted-but-paid" system (using Jane Ginsburg's words in her article 'Fair Use for Free, or Permitted-but-Paid' (2014) 29 Berkeley Technology Law Journal 1446) would balance creators' right to fair remuneration against rights to culture, science, and artistic expression under Articles 17(2) of the Charter and 27(2) Universal Declaration on Human Rights.

[36] See Article 57 EU AI Act. The recent UK government policy consultation 'A pro-innovation approach to AI regulation: government response' also discusses the use of regulatory sandboxes to trial innovative approaches—including licensing and watermarking—without immediate legal risk, aiming to foster responsible technological advancement and creative rights protection. See https://www.gov.uk/government/consultations/ai-regulation-a-pro-innovation-approach-policy-proposals/outcome/a-pro-innovation-approach-to-ai-regulation-government-response.

[37] Willy Martinsen, Nordic Music CMOs Present Joint Principles for Licensing AI, 29 April 2025, available at https://www.tono.no/en/nordic-music-cmos-present-joint-principles-for-licensing-ai/.

[38] Mary Cormack, CLA announces development of Generative AI Training Licence, 23 April 2025, available at https://cla.co.uk/development-of-cla-generative-ai-licence/. See also https://www.pls.org.uk/news-events-policy/news/pls-and-alcs-agree-to-development-of-pioneering-cla-generative-ai-licence/.

above may provide solutions, we need to acknowledge that different stages of AI development may need different approaches. For example, some AI platforms have recently secured licensing deals with news publishers, focusing on later stages like fine-tuning and RAG (Retrieval Augmented Generation), where companies add specific content to improve their AI systems. Indeed, after basic AI training, platforms often enhance their systems in two ways: fine-tuning adjusts the AI using specialised datasets for specific tasks (e.g. medical diagnosis), while RAG lets AI pull fresh, relevant information from external databases during conversations to provide current, accurate answers.[39] It therefore makes sense for AI platforms to seek licences at these stages, because it's actually possible to identify and license individual pieces of content,[40] unlike during initial training where millions of works are processed simultaneously and for a set of reasons (e.g. market failure and impossibility to license each single piece of content in a gigantic corpus) licenses cannot cover the acts of pre-training, training, or post-training. Thus, a two-tier approach (i.e. allowing exceptions for the massive initial training phase where individual licensing is impractical, but requiring proper licensing when AI companies later add specific content to enhance their AI systems) seems appropriate.

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All the options mentioned in this article are well-intentioned and aim to create fair, efficient licensing pathways. But the ultimate challenge lies in avoiding over-regulation that could stifle European innovation, e.g. requiring complex multi-jurisdictional negotiations with collecting societies, extensive documentation for levy calculations, excessive transparency reporting and compliance monitory obligations—all demanding specialised legal expertise and diverting resources from core innovation activities. Indeed, if compliance burdens become too excessive, European AI platforms risk being displaced from global markets, leaving space primarily for US and Asian giants who operate under less stringent frameworks. The danger is particularly acute for small and medium sized enterprises and startups, which lack the resources to navigate complex regulatory requirements while competing against well-funded international competitors. Current surveys indicate that 16% of AI startups are already considering relocating outside the EU, while venture capital is increasingly flowing toward regions with lighter regulatory touches.[41] This exodus could create the very

[39] According to Neudata's market analysis, 77% of AI licensing deals are for real-time information retrieval (RAG systems), while only 31% are for model training. See Jessica Li Gebert, Feeding the machines, The AI data licensing market: insights and deal trends, 10 June 2025, available at https://www.neudata.co/blog/ai-data-licensing-market-analysis.

[40] For example, both OpenAI and Google seek licensing agreements with publishers that cover fine-tuning and RAG. See Trishla Ostwal, Google Eyes Publisher Deals to Train AI, Following OpenAI and Perplexity's Lead, 23 July 2025, Adweek, available at https://www.adweek.com/media/google-publisher-deals-train-ai-openai-perplexity/.

[41] Tom Whittaker, EU AI Act: How will Startups be Impacted?, 4 January 2023, available at https://www.burges-salmon.com/articles/102i4ct/eu-ai-act-how-will-startups-be-impacted/.

dependencies Europe seeks to avoid, making the continent reliant on foreign AI technologies precisely when digital sovereignty becomes most critical.

Beyond Europe

The global landscape indeed reveals divergences in approaches to AI training and copyright protection, which reflects distinct orientations toward innovation, creators' rights, and technological sovereignty.

In the US, for example, the doctrine of fair use may offer AI companies broader protection than European frameworks. While in the first three AI and copyright cases so far courts in Europe have held that the TDM exception did apply in this context,[42] recent US rulings in *Bartz v. Anthropic*[43] and *Kadrey v. Meta*[44] show that courts there interpret fair use more expansively; indeed, they found that training AI models on lawfully obtained copyrighted works constitutes "spectacularly" and "highly" transformative use. This approach clearly prioritises technological innovation, with judges emphasising the transformative nature of AI training over potential market substitution effects. Meanwhile, the UK government is considering introducing a new TDM exception that would "ensure AI developers have easy access to a broad range of high-quality creative content" while enabling "creators and right holders to exercise control over, and seek remuneration for, the use of their works for AI training".[45] This proposed exception would be underpinned by transparency requirements for AI developers regarding training data sources and generated outputs, representing a compromise between creative industry concerns and AI sector needs.[46]

Asian jurisdictions embrace even more permissive approaches. Japan allows broad commercial use of copyrighted works for "non-enjoyment" purposes, which may impliedly cover AI training regardless of the content's commercial nature or legal acquisition status.[47] Similarly, Singapore is highly permissive: it allows both commercial and non-commercial AI training by enabling copying of all types of

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[42] See above fn. 2.

[43] *Bartz et al. v. Anthropic PBC*, No. 3:24-cv-05417-WHA, U.S. District Court for the Northern District of California, proposed settlement agreement dated 5 September 2025.

[44] *Kadrey et al. v. Meta Platforms, Inc.*, No. 3:23-cv-03417, 2025 WL [specific page or pin cite], (N.D. Cal. June 24, 2025) (Chhabria, J.).

[45] Paragraph 47 of 'Copyright and AI: Consultation', presented to Parliament by the Secretary of State for Science, Innovation and Technology by Command of His Majesty, December 2024, available at https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence.

[46] Idem.

[47] Article 30-4. It should also be noted that debate continues regarding the scope and limitations of this provision, particularly concerning the role of lawful access requirements and the boundaries of permissible use. For example, the Japanese Copyright Office's 2024 guidance confirms that Article 30-4 applies to AI development but emphasises limitations, particularly for training designed to mimic specific creators' styles. See 'General Understanding on AI and Copyright in Japan – Overview' (published by the Legal Subcommittee under the Copyright Subdivision of the Cultural Council), available at https://www.bunka.go.jp/english/policy/copyright/pdf/94055801_01.pdf.

copyrighted works for computational data analysis. The exception cannot be excluded by contract, permitting collaboration and verification.[48]

This regulatory fragmentation creates significant competitive risks for Europe. While the EU develops comprehensive compliance frameworks requiring licensing, transparency obligations, as well as opt-out mechanisms (which as mentioned are currently surrounded by uncertainty about valid formats), EU competitors operate or are planning to operate under lighter regulatory burdens. The danger extends beyond immediate compliance costs: if European actors face disproportionate regulatory constraints, global AI development may consolidate in jurisdictions with minimal copyright restrictions, potentially marginalising European innovation. And without coordinated international responses, forum shopping will intensify, with global companies gravitating toward jurisdictions offering the weakest copyright protections, ultimately undermining creators' rights worldwide while concentrating AI capabilities in regulatory havens.

International coordination is thus important and should be further incentivised. WIPO's AI Infrastructure Interchange initiative already provides a promising forum for harmonising copyright approaches across jurisdictions.[49] But WIPO should expand this initiative to specifically address harmonising AI training exceptions, fostering international dialogue on uniform standards that effectively balance creators' rights with technological innovation and legal certainty. Similarly, the OECD's framework on IP issues in AI training offers guidance for developing consistent global standards.[50] The OECD could strategically leverage this analytical foundation to advocate for harmonised AI training exceptions across member countries, establishing common principles that effectively balance creators' rights with technological innovation needs. Such international leadership would complement existing voluntary codes of conduct[51] by providing clearer legal pathways for legitimate AI development while addressing essential transparency and fair compensation mechanisms globally today.

Future Scenarios

[48] Section 244 of the Singaporean copyright law (Copyright Act 2021).
[49] World Intellectual Property Organization (WIPO), AI Infrastructure Interchange (AIII) Initiative, to be launched on 8 December 2025, Geneva, Switzerland, available at https://www.wipo.int/meetings/en/2025/ai-infrastructure-interchange.html.
[50] OECD (2025) Intellectual Property Issues in Artificial Intelligence Trained on Scraped Data, Organisation for Economic Co-operation and Development, Paris, February 2025, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/02/intellectual-property-issues-in-artificial-intelligence-trained-on-scraped-data_a07f010b/d5241a23-en.pdf.
[51] Key voluntary AI codes of conduct include the G7 International Code of Conduct; EU AI Act voluntary frameworks; White House tech company commitments (Amazon, Google, Microsoft, OpenAI, Anthropic, Inflection, Meta); company-specific policies like Anthropic's Responsible Scaling Policy and OpenAI's safety commitments; technical standards including ISO 42001; NIST AI Risk Management Framework; IEEE Ethically Aligned Design; and national initiatives like the UK AI Cyber Security Code and the Canadian Voluntary Code of Conduct for Advanced Generative AI.

Several future scenarios are possible. First, lawsuits may multiply even further, producing uncertainty but also precedents. This scenario may envision an explosion of copyright litigation across Europe as creators, publishers, and collective management organisations challenge AI companies' training practices. While creating short-term uncertainty and high legal costs, this wave might still establish judicial precedents defining the boundaries of TDM exceptions and AI training rights. The CJEU's upcoming ruling in *Like Company v Google Ireland* will likely catalyse further litigation, with national courts grappling with questions of lawful access, commercial use limits, and opt-out mechanisms. Though costly, this litigation-driven approach might ultimately provide legal clarity that legislative frameworks have struggled to deliver.

Secondly, a certain licensing culture may expand further, with creative industries and tech firms negotiating and thus creating a new balance. Here, market forces will need to drive comprehensive licensing agreements between AI developers and content creators, bypassing legal uncertainties – especially, territorial copyright restrictions requiring multi-jurisdictional clearance - through commercial arrangements. Collective management organisations would emerge as key intermediaries, offering one-stop licensing for vast content repertoires while ensuring fair remuneration distribution.[52] This scenario may see the development of standardised licensing terms, transparent royalty rates, and efficient clearing mechanisms that make large-scale AI training economically viable while protecting creators' interests. Success would depend on achieving reasonable pricing that doesn't stifle innovation while providing meaningful compensation.

Against this backdrop of possible future scenarios, it is to be hoped that Europe can manage to combine transparency, compensation, and innovation, showing that regulation and creativity can coexist by both protecting content creators' interests and AI platforms; thus, positioning Europe as a global leader in responsible AI governance. The target is to demonstrate that technological advancement and creative protection are mutually reinforcing for society today.

Conclusion

It would be misleading to think of copyright only as a fortress against new machines. Equally wrong would be to treat it as irrelevant in the age of algorithms. A better comparison, as mentioned, is that of a 'compass'. Copyright cannot stop the technological wave, nor should it. But it can orient it. Even if imperfect, it offers direction. By ensuring recognition of authors, minimum economic survival for

[52] See paragraphs 94-95 of the UK government 'Copyright and AI: Consultation', above fn. 45 (noting that "94. Often creators and performers license their rights to collective management organisations (CMOs), who are given a mandate to license their members' works on a blanket basis. Collective licences are often the most efficient way to license large numbers of works. ... 95. For AI developers to have easy access to licensed material, in particular small firms and new entrants, it will be important for collective licences to be available and accessible to them. It will also be important that collective management organisations are able to reserve the rights of their members effectively").

creators, and plural voices in culture, copyright keeps alive the democratic spirit that machines cannot replace. In this sense, copyright in the age of AI is not a relic of the past, but one of the few instruments capable of giving shape to our common digital future.

This compass-based framework must rest on fundamental principles. Copyright protection should be reserved exclusively for human-generated works that reflect genuine creative input and authorship. Pure AI-generated outputs, lacking meaningful human involvement, should fall outside copyright's protective scope. Equally fundamental is permitting AI training on copyrighted materials, provided it operates within carefully calibrated conditions. This includes respecting creators' opt-out mechanisms, ensuring transparency about dataset composition and training methodologies via reasonable and proportionate disclosure requirements, establishing fair compensation through collective licensing schemes or statutory remuneration systems, and maintaining lawful access to training materials rather than relying on pirated content. Such a framework acknowledges that prohibiting AI training entirely would stifle innovation while perpetuating algorithmic bias by forcing reliance on outdated, unrepresentative datasets. Instead, regulated access enables more equitable AI development while preserving creators' rights.