AUTHORS', PERFORMERS' AND OTHER CREATIVE WORKERS' ORGANISATIONS JOINT STATEMENT ON ARTIFICIAL INTELLIGENCE AND THE DRAFT AI ACT

The undersigned organisations represent the collective voice of hundreds of thousands of writers, performers, composers, songwriters, screen directors, screenwriters, visual artists, journalists, translators and other creative workers whose human artistry lies at the core of the creativity that our societies cherish and enjoy on a daily basis.

In this era of unparalleled technological advancements, we embrace the opportunities presented by artificial intelligence (AI) to enhance the creativity of our members, enrich their artistic endeavours, and empower them to weave a tapestry of diverse narratives.

We recognize the numerous advantages that AI can offer to our societies and its potential to enhance our members' creative abilities. However, we are also cognizant of the potential darker consequences AI can bring. It poses a significant risk of widespread job displacement, jeopardizing our members' control over their artistic creations, personal voices, and likenesses. Furthermore, at a broader level, it may threaten the very democratic principles that govern our societies. This is why, we firmly believe that AI must not be left to develop in a vacuum and that robust safeguards must be built around it to make sure it may flourish in a manner that upholds fundamental rights and preserves the intrinsic worth of human creativity.

As authors, performers and creative artists, our members heavily depend on the licensed use of their creative works, voice, likeness, and performances – in other words, their rights and personal and non-personal data - to make a living.

Presently, these invaluable assets, are being used on an unparalleled level to train AI technologies in generating synthetic content. Such content is progressively becoming indistinguishable from the creators' own work and, to a significant extent, is being employed as a substitute for human creativity. Regrettably, this is occurring without the creators' consent and without financial compensation.

Through the realistic and persuasive replication of our members' works, performances and personal data, generative AI is exerting a growing influence on our societies, causing greater ambiguity between what is true and authentic and what is not. The growing sophistication of deep fakes poses a significant threat, capable of profoundly disrupting our communities, perpetuating misconceptions and biases, and driving our societies further into entrenched divisions and heightened polarization.

As the three main European Institutions engage in trilogue discussions concerning the AI Act, we strongly urge all policymakers involved to exert maximum effort in addressing the following crucial matters:

1. Championing a human-centric and consent-based approach concerning the use of personal and non-personal data, encompassing the creative works and performances of our members, by AI technologies.

2. Ensuring the utmost transparency in the usage of such data by AI.

3. Establishing a robust legal framework specifically tailored to the profound threat posed by deep fakes and other harmful AI generated content, in order to safeguard our societies more effectively.

Beyond the AI Act, we believe it is imperative for policymakers to urgently clarify the scope, feasibility, and effective enforcement of the text and data mining exceptions provided by the 2019/790 Directive on Copyright in the Digital Single Market (henceforth the CDSM Directive), including the opt-out mechanism, since many AI providers appear to justify their activities on the basis of those exceptions. This process should pave the way for a comprehensive strategy promoting the value of human creation and ensuring that the EU copyright acquis remains true to its objective.

In addition, as the use of AI technology in the cultural and creative sectors is likely to increase significantly in the coming years, the question of the copyright protection of works generated or created with AI assistance will need to be clarified respecting and fostering the ongoing role of authors as the originators of original works.

It is of paramount importance to ensure that AI plays a role in enhancing our members' creativity rather than replacing it, while simultaneously safeguarding the rights of our creative community and society as a whole against any form of AI abuse. In the subsequent section of this document, we outline the key elements that we deem necessary for the AI Act to effectively fulfil these objectives.

THE "INPUT" – WHAT GOES IN

Transparency

Generative AI requires an extraordinary volume of data to learn from existing datasets, enabling it to deliver outputs that are more sophisticated and authentic in nature.

For years, these technologies have undergone training using publicly accessible but also predominantly unlicensed datasets of personal and non-personal data, with neither proper authorization nor compensation provided. The progressive expansion of exceptions for text and data mining, initially limited to scientific research but subsequently extended to commercial purposes, has effectively normalised this widespread appropriation.

In Europe, one of these exceptions is formulated in art. 4 of the CDSM Directive, and is however limited to "reproductions and extractions of **lawfully accessible** works (…) for the purposes of text and data mining".

There is a complete lack of transparency regarding the utilisation of our members' likeness, voice, works and performances for AI training purposes, making it impossible for them to ascertain whether their works and data have been obtained from a legitimate source. This lack of knowledge is deeply concerning as it hinders our members' ability to regain control over their works and performances and object to their use if it originates from an unauthorized source or is in breach of their moral and economic rights.

We appreciate the European Parliament's endeavours to tackle generative AI and foundational models by imposing specific transparency requirements on the "input" side. However, merely offering a "*sufficiently detailed summary of the use of training data protected under copyright law*" falls short of adequately addressing the issue. Nevertheless, **it is imperative for the European Parliament, the Commission, and the Council of the EU to further enhance these safeguards and guarantee the utmost transparency when it comes to all works, performances and personal data used for AI applications**.

The EU TDM exception

We would like to emphasize that the Text and Data Mining (TDM) exception for commercial purposes outlined in Article 4 of the CDSM Directive was formulated and implemented without undergoing a comprehensive impact assessment. This occurred years prior to the **significant surge in the use of generative AI, which heavily relies on our members' personal and non-personal data, including their copyrighted works and performances**.

Text and data mining, as defined in the Directive, refers to an "*automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends, and correlations*". The stated purpose of this technique is to acquire "new knowledge" and facilitate the discovery of "new trends," thereby benefiting the research community and fostering innovation. **However, it has become evident that generative AI has the capacity to generate content on an extensive scale for commercial objectives that extend far beyond the original intentions**. This expanded usage has resulted in significant detrimental consequences for creators, artists, and the broader cultural and creative sectors.

Several international treaties, as well as EU and national laws, stipulate that exceptions to copyright and neighbouring rights must adhere to the three-step test. The CDSM Directive incorporates this crucial safeguard, which asserts that exceptions, including for acts of reproduction undertaken for text and data mining purposes, can only be applied "***in certain special cases** that **do not conflict with the normal exploitation of the works** or other subject matter **and do not unreasonably prejudice the legitimate interests of rightholders**.*" Regrettably, these conditions are not currently met, blatantly violating the provisions of the CDSM Directive, which also explicitly states that its exceptions and limitations aim to achieve "*a fair balance between the rights and interests of authors and other rightholders, on the one hand, and of users on the other*". Stretching TDM exceptions to encompass the systematic and extensive reproduction of our members' copyrighted works and performances, with the intention of generating synthetic works for commercial use that closely resemble the content contributed by our members and unfairly compete with it, is entirely unacceptable. Disruptive job displacement in the cultural and creative sectors could lead to standardized creative content production detrimental to creators' and artists' survival and present a major threat to the future of European cultural diversity.

We strongly urge all policymakers to ensure that the EU copyright acquis remains true to its objective and does not undermine our legitimate fundamental rights. This is all the more important that the promised ability to opt-out from commercial text and data mining (TDM) is non-existent, rendering it a broken promise.

In current practice, authors, performers and other content creators are **unable to effectively avail themselves of the opt-out option**, due to the complete opacity on the actual use of creative works, voice, likeness and performances by AI software, and the difficulties to identify a process to effectively opt-out should they wish to. Even when they manage to exercise it, they often encounter situations where their reservations are circumvented or disregarded.

These practices completely **undermine** the ability of authors, performers and other content creators to **license the reproduction of their copyrighted works**, despite the provision in the CDSM Directive that "*rightholders should remain able to license the uses of their works or other subject matter falling outside the scope of the mandatory exception (…) for text and data mining for the purposes of scientific research*" as outlined in Article 3 of the CDSM Directive. If such licenses were available, the application of Articles 18 to 23, including the transparency obligations specified in Article 19, would of course be triggered.

According to EU copyright law (Directive 2001/29 - recital 35) rightholders should receive fair compensation in certain cases of exceptions or limitations "*to adequately compensate them for the use made of their protected works or other subject-matter.*" This recital further states that "*a valuable criterion would be the possible harm to the rightholders resulting from the act in question.*" However, when the mandatory exception for text and data mining for scientific

research purposes (Article 3) was introduced, the CDSM Directive (recital 17) claimed that "*any potential harm caused to rightholders through this exception would be minimal*." Consequently, it stated that "*Member States should not provide compensation for rightholders regarding uses under the text and data mining exceptions introduced by this Directive*." Today, it is evident that the harm inflicted on rightholders under the text and data mining exceptions (both Articles 3 and 4) is in fact **maximal**.

In essence, the exception for commercial purposes in relation to Text and Data Mining (TDM) seems woefully inadequate and ill-prepared to address the realm of AI, an extraordinary advancement that was unforeseen when the exception was initially approved. Not only is its compatibility with the three-step test questionable, but the provision for opting out of the exception is entirely ineffective, depriving authors, performers, and other content creators of the ability to license the reproduction of their copyrighted works and performances. Moreover, the combined impact of the two European exceptions for text and data mining, as outlined in articles 3 and 4 of Directive 2019/790, on the livelihood of authors, performers, and other content creators is significant. This impact not only undermines the value of their intellectual property rights but, more alarmingly, has the potential to endanger their future livelihoods. **Consequently, the absence of any form of compensation for these individuals represents a fundamental injustice**.

It is imperative for policymakers to promptly clarify the scope, feasibility, and effective enforcement of the exceptions related to text and data mining in the EU acquis. This process should pave the way for a comprehensive strategy that supports and promotes the value of human creation while adequately addressing the rapid technological advancements affecting the cultural and creative sectors.

The EU General Data Protection Regulation

A significant portion of the data collected through generative AI comprises personal data, encompassing elements such as the voice, appearance, and other biometric data of performers and artists. Under the EU General Data Protection Regulation (GDPR), the use of such data should be contingent upon the explicit prior consent of the individuals concerned. However, in reality, large-scale extractions of their personal data occur without their knowledge or awareness. Lengthy terms of use agreements on social media platforms frequently include provisions granting access to this content for such purposes, placing customers in a situation where their usage is hindered or unreasonably encumbered if they refuse to comply.

Another form of extensive personal data scraping takes place on websites, online libraries, contractor or third-party databases, frequently operating under the terms and licenses granted by these entities. Additionally, content platforms that showcase protected content, including user-generated platforms, also become targets for such data collection activities.

The EU GDPR falls short in effectively curbing the extensive plundering of personal data, with remedies that are too slow to keep up with the rapid pace of these data extractions. Moreover, personality rights within the EU are not harmonized adequately, thereby lacking a robust safeguard. This situation is particularly distressing when considering the dire ramifications for performers and artists, as their personal information and likeness are utilized to generate synthetic and highly realistic versions of themselves. These synthetic counterparts unjustly compete with the actual individuals for job opportunities, creating an inherently unfair environment. Additionally, their personal data is often exploited in viral deep fakes, which can inflict significant damage on their reputation, integrity and thus violate their moral rights.

We therefore call for the AI Act to also incorporate **explicit measures for safeguarding individuals and providing swift, accessible, and efficient remedies, shielding them from any undesired extraction of personal data for the training of generative AI models. The inclusion of such safeguards will prioritize informed consent as a fundamental principle**.

THE "OUTPUT" – WHAT COMES OUT

Labelling obligations

We firmly advocate for the utmost level of transparency at the output stage, encompassing AI users and AI-generated content such as texts, images, audio, videos, voice, likeness and more. This transparency is crucial not only to safeguard the livelihoods of professional authors and performers from misappropriation and to foster human creativity, but also to inform the public about the utilization of original works and personal data by AI systems. The emergence of deep fakes poses a significant threat to the authenticity of human creations and presents a tangible danger to our democratic societies. Consequently, addressing this issue within the AI Act is imperative; it should not be disregarded or left unchallenged.

Article 52, paragraph 3 of the AI Act of the European Commission proposal includes important transparency safeguards requiring "*users of an AI system that generates or manipulates image, audio or video content*" to disclose that the content has been artificially generated or manipulated.

However, this Article is subject to broad exceptions "*for the exercise of the right to freedom of expression and the right to freedom of the arts and sciences guaranteed in the Charter of Fundamental Rights of the EU*" (as provided by the Commission's proposal with no justification in the impact assessment) or, worse, "*where the content is part of an evidently creative, satirical, artistic or fictional work or programme subject to appropriate safeguards for the rights and freedoms of third parties*" (as provided by the Council general approach).

We firmly maintain that there should be **no exceptions to the transparency obligation** other than when the use of an AI system that generates or manipulates text, audio or visual content **is authorized by law** (as in certain law enforcement circumstances or under certain existing copyright exceptions). The transparency obligation should of course be complied with in a way that does not does not hamper the display of the work.

All deep fakes, **regardless of whether they are created with consent or not**, must be subjected to **mandatory and rigorous labelling obligations**. This is essential because both types of deep fakes possess an equal potential to mislead consumers and citizens, creating confusion regarding the authenticity of the content they read, hear, or watch, and deceiving them into believing that their experiences are genuine. Allowing deep fakes to remain undetected under the pretext of safeguarding freedom of expression, or freedom within the realms of arts and sciences, is an exceedingly perilous and precarious course of action.

Imposing labelling obligations does not hinder the enjoyment of these freedoms. On the contrary, it serves as a necessary measure to prevent any distorted representation of reality from being justified under overly broad, ambiguous, and all-encompassing exceptions.

[A recent study conducted by the European Parliament](#) supports the regulation of deepfake technology as high-risk and emphasizes the need to restrict exceptions for the labelling requirement of deepfakes. The study points out that "*these exceptions are so broad and open to interpretation that, as a result, many deepfakes may remain unlabelled, and a discussion on the labelling requirement before the courts can be predicted. Weighing the potential negative impacts of deepfakes when they are not recognised as such against their beneficial use in arts, sciences and expression, one could argue that labelling in these situations is recommendable. Would a deepfake-based artwork or a satirical deepfake video protected by the freedom of expression be less valuable when the deepfake character is revealed?*"

Moreover, we strongly insist that any generative or manipulative content of this nature must strictly adhere to **informed and explicit consent**, unless specific legal provisions permit certain uses (such as for satirical, parodic, or pastiche purposes) without it. Considering the **significant gendered implications** associated with the use of AI for deep-faking and the **severe physiological and reputational consequences that non-consensual deepfakes can inflict**,

we assert that this requirement should be reinforced by ensuring that victims of unauthorized deepfakes have **access to accessible, effective, and expeditious avenues for seeking redress and compensation**.

CONCLUSION

We strongly urge all EU policymakers to carefully consider the aforementioned points and prioritize both transparency and the consent of authors and performers in utilizing their work as fundamental principles within the AI Act, encompassing both input and output stages.

In doing so, it is also imperative to promptly address the extent, feasibility, and effective enforcement of the text and data mining exceptions outlined in the CDSM Directive, as well as those specified in the General Data Protection Regulation. This undertaking should lead to a comprehensive and much-needed strategy aimed at supporting and promoting the value of human creativity, while adequately addressing the rapid technological advancements occurring within the cultural and creative sectors.

We look forward to collaborating with the European institutions to attain an outcome that not only forwards the advancement of AI technologies to serve and enhance human creativity, but also promotes original content, safeguarding the livelihoods of the countless authors and performers we represent. The recognition and equitable reward for their creative work, as well as the respect for their privacy, likeness, voice, and other personal data, are crucial aspects on which their livelihoods depend.

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- **CEATL (European Council of Literary Translators' Associations)** was created in 1993 as a platform where literary translators' associations from different European countries could exchange views and information, and join forces to improve status and working conditions of translators. It now unites 34 member associations from 26 countries across Europe, representing some 10,000 individual literary translators.

  Web: www.ceatl.eu / EU Transparency Register ID: 65913704675-82

- **ECSA (European Composer and Songwriter Alliance)** represents over 30,000 professional composers and songwriters in 27 European countries. With 54 member organisations across Europe, the Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music.

  Web: www.composeralliance.org / EU Transparency Register ID: 71423433087-91

- **EFJ (European Federation of Journalists)** is the largest organisation of journalists in Europe, representing over 320,000 journalists in 73 journalists' organisations across 45 countries. The EFJ is recognised by the European Union and the Council of Europe as the representative voice of journalists in Europe. The EFJ is a member of the European Trade Union Confederation (ETUC).

  Web: www.europeanjournalists.com / EU Transparency Register ID: 27471236588-39

- **EGAIR (European Guild for Artificial Intelligence Regulation)** is a network of creatives and associations from all over Europe, lobbying for the protection of artists' works and data from AI companies. Originally founded by MeFu, the Italian association of comic book creators, EGAIR now represents over 20.000 creatives, artists and associations.

  Web: www.egair.eu / EU Transparency Register ID: 385629348610-21

- **EWC (European Writers' Council)** is the world's largest federation representing solely authors from the book sector and constituted by 49 national professional writers' and literary translators' associations from 31 countries. EWC members comprise over 220.000 professional authors, writing and publishing in 33 languages.

  Web: https://europeanwriterscouncil.eu / EU Transparency Register ID: 56788289570-24

- **FERA (Federation of European Screen Directors)** represents film and TV directors at European level, with 48 directors' associations as members from 35 countries. Founded in 1980, FERA speaks for more than 20,000 European screen directors, representing their cultural, creative and economic interests.

  Web: https://screendirectors.eu / EU Transparency Register ID: 29280842236- 21

- **FIA (International Federation of Actors)** is a global union federation representing performers' trade unions, guilds and professional associations in about 70 countries. In a connected world of content and entertainment, it stands for fair social, economic and moral rights for audio-visual performers working in all recorded media and live theatre.

  Web: www.fia-actors.com / EU Transparency Register ID: 24070646198-51

- **FIM (International Federation of Musicians)** is the only body representing professional musicians and their trade unions globally, with members in about 65 countries covering all regions of the world. Founded in 1948, FIM is recognised as an NGO by diverse international authorities such as the ILO, WIPO, UNESCO, the European Commission, the European Parliament or the Council of Europe.

  Web: https://www.fim-musicians.org / EU Transparency Register ID: 01953872943-65

- **FSE (Federation of Screenwriters in Europe)** is a network of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. It comprises 25 organisations from 19 countries, representing more than 7,000 screenwriters in Europe.

  Web: www.federationscreenwriters.eu / EU Transparency Register ID: 642670217507-74

- **IAO (International Artist Organisation)** is the umbrella association for national organisations advocating for the rights and interests of the Featured Artists in the music industry. Our main interests are transparency, the protection of intellectual property rights and a fair reflection of the value an artist's work generates.

  Web: www.iaomusic.org / EU Transparency Register ID: 490166825799-90

- **IFJ (International Federation of Journalists)** is the world's largest organisation of journalists, representing 600,000 media professionals from 187 trade unions and associations in more than 140 countries.

  Web: www.ifj.org / EU Transparency Register ID: 999725935832-94

- **UNI MEI - UNI - Media, Entertainment and Arts** unites over 140 unions and guilds to raise standards and enforce rights for more than 500.000 creatives, technicians and auxiliary workers. Together, our members work for a fair, inclusive, equal, and sustainable global entertainment industry and a just transformation.

  Web: www.uniglobalunion.org / EU Transparency Register ID: 605859248462-93

- **UVA (United Voice Artists)** is a global coalition of voice acting guilds, associations, and unions that have united to pursue their shared goals of protecting and preserving the act of creating, in particular, through the human voice. This collaborative effort brings together prominent associations and unions from the European Union, including France, Spain, Italy, Germany, Austria, Belgium, and Poland, as well as organizations in Switzerland, Turkey, the United States of America, Africa and in South America.

  Web: www.unitedvoiceartists.com / EU Transparency register ID: 810100650765-18