ACT POLICY PAPER ON THE RELATIONSHIP BETWEEN GEN-AI AND COPYRIGHT AND RELATED RIGHTS

BACKGROUND

Throughout past years, the EU Institutions have been looking at the relationship between generative Artificial Intelligence (Gen-AI) and copyright and related rights, as notably illustrated by discussions within the Council of the EU on that specific topic, by the launch of a dialogue by the European Commission with a view to draft and adopt a Code of Practice on AI by mid-2025 and, earlier, by the inter-institutional negotiations that led to the adoption of the EU's AI Act (AIA). ACT has developed this Policy Paper to facilitate our weighing-in on the subject in our contacts with EU Institutions, Member States and partner organisations, being fully cognizant that these copyright-related "GenAI" discussions are likely to continue to be debated intensely throughout the EU's 2024-29 agenda and mandate.

KEY TAKEAWAYS

- **AI COMES WITH CHALLENGES AND OPPORTUNITIES.** While AI offers opportunities (e.g., in pre and post-production, accessibility, marketing), it also poses challenges like misinformation, piracy, and privacy breaches. Generative AI often uses copyrighted works without permission, impacting creators and rightsholders.
- **COPYRIGHT IS ABOUT OPT-IN.** ACT believes the existing EU copyright framework (e.g., CDSM Directive) contains strong principles that can help to address some Gen-AI challenges. Emphasis is placed on implementing and enforcing existing frameworks (AI Act and CDSM Directive) effectively, in particular the *opt-in* approach, which is inherent to all functioning copyright frameworks.
- **SAFEGUARDING RIGHTHOLDERS INPUT IN AI TRAINING.** Clearer guidance is needed for rightsholders to reserve their rights as current proposed mechanisms are not fit for purpose (e.g., through robot.txt files or metadata). Proposed solutions like machine-readable opt-out markers or an EU-wide database could help, though they must remain optional to comply with international copyright law.
- **APPLYING COPYRIGHT RULES TO AI OUTPUTS.** The EU copyright framework provides a structured approach to determining 'copyright eligibility' for works created with AI. Fully AI-generated works likely won't qualify, but those with substantial human involvement may. Courts should assess copyright eligibility case-by-case, focusing on the extent of human input over AI content. Human creativity should remain central to copyright law, as it underpins cultural and artistic progress.
- **NO SUI GENERIS RIGHTS FOR AI.** ACT opposes creating sui generis rights for AI outputs, as it could effectively reward companies that use copyrighted data without authorisation, and disproportionately benefit large tech companies that own AI platforms and have the resources to train models on vast datasets.

- **AI TRAINING SHOULD BE BASED ON PERMISSION TO USE.** In order to promote and facilitate the widespread adoption of AI tools, including in the creative industries, users of AI tools should be protected from inadvertent breaches of copyright. This can be achieved through ensuring models are only training on material they have permission to use, AI developers are solely responsible for any breach of copyright in the creation of outputs. Without these protections, there is no incentive for AI developers to protect against copyright breach.
- **NO NEED FOR ADDITIONAL TRANSPARENCY AND LABELLING OBLIGATIONS.** Audiovisual services already adhere to stringent national regulations and the AI Act's transparency rules for deep fakes. Further labelling obligations should be avoided in editorially controlled environments to prevent consumer disruption. However, AI system providers should mark synthetic content to help identify deep fakes, with flexibility based on content type.
- **LICENSING SHOULD REMAIN VOLUNTARY AND DIRECT.** Rightsholders must control whether and how their works are used for generative AI. A voluntary, direct licensing framework at the EU level is crucial to ensure fair agreements, especially for high-cost AV content. Compulsory licensing is unsuitable for AV works due to risks of under-compensation, loss of control, and difficulty in tracking royalties.

INITIAL REMARKS - THE EU'S COPYRIGHT ACQUIS AND THE CHALLENGE(S) POSED BY GEN-AI

ACT welcomes the EU's leadership efforts at developing a regulatory framework for Artificial Intelligence ("AI"). This leadership is critical, as AI interacts with various sectoral regulations, including copyright, and raises complex questions with regard to the protection of Intellectual Property ("IP") portfolios, including those of our ACT members. As part of the digital transformation, the audiovisual ("AV") sector is embracing technological advancements that enhance both creative processes and content distribution methods. AI developments, such as generative, foundational and large language models, bring both opportunities and challenges. In accordance with the results of the AI Summit[1] ACT deems it essential to prioritize human creativity and put it at the heart of artistic and media production in the AV sector.

ACT recognizes that some AI applications come with problematic issues and challenges, including misinformation, piracy, and privacy infringements, which EU regulators are notably seeking to remedy through the Copyright in the Digital Single Market Directive (The "CDSM Directive"), The Digital Services Act ("DSA") and the General Data Protection Regulation ("GDPR"). AI also comes with essential promises within and for our industry, already providing solutions in areas like post-production, accessibility, marketing and archiving. However, as generative AI continues to evolve, questions also emerge around how copyright rules should apply to the training, development, and outputs of these models.

Gen-AI models are currently frequently using copyrighted works without permission or compensation for original creators, which can impact creators' and rightsholders' livelihoods by substituting or undermining the market for original works. While these risks and challenges are real, ACT believes that the current EU copyright framework includes robust principles that should be better applied in this new context. The EU copyright system has proven adaptable. Rather than creating new ad hoc rules, ACT recommends focusing on the effective implementation of the copyright *acquis* and of the recently-

[1] Statement on Inclusive and Sustainable Artificial Intelligence for People and the Planet: "This Summit has highlighted the importance of reinforcing the diversity of the AI ecosystem. It has laid an open, multi-stakeholder and inclusive approach that will enable AI to be **human rights based, human-centric, ethical, safe, secure and trustworthy**"

adopted AI Act, ensuring compliance with established copyright principles and creating the conditions for their application.

I. THE EU'S COPYRIGHT FRAMEWORK IN THE CONTEXT OF AI

Gen-AI, like past technological developments, could be effectively managed within the existing EU copyright framework. For instance, the EU has displayed a history of adaptation to technological advancements—from VCRs to digital recording devices—without resorting to sweeping legislative changes, and this adaptability should continue to apply today. By first allowing recent regulations to take effect, EU policymakers will be in a position to fully assess the AI Act's impact on copyright and address any future gaps thoughtfully, maintaining a healthy balance in the regulatory landscape that supports both innovation and creators' rights.

It is therefore our view that the priority is to create the conditions and requirements necessary for proper application of the current EU copyright framework in order to handle challenges posed by Gen-AI. EU copyright law has consistently adapted to technological advancements through targeted updates, including the CDSM Directive. These updates help to ensure that the copyright system remains responsive and balanced, accommodating both technological innovation and the protection of rightholders.

The focus today should be on the effective implementation and enforcement of the recently adopted AI Act. By ensuring that it enables the correct application of established EU copyright *acquis*. The adaptability shown by the EU in the face of technological advances suggests that Gen-AI can could be managed under current copyright laws, which provide a robust structure for evaluating potential infringements at both the input and output stages.

II. INPUT STAGE: MORE GUIDANCE NEEDED TO BETTER SAFEGUARD RIGHTHOLDERS IN AI MODEL TRAINING

Although the EU legal framework, notably the CDSM Directive and AI Act, provides guidance and rules for using copyrighted material in AI model training, some questions and uncertainties remain regarding copyright-protected content used in this context.

First, a conditional precedent for any reservation of rights is to clarify who shall be authorised to declare the opt-out as the so-called "rightsholder" according to Art. 4 (3) CDSMD.

According to Court of Justice of the European Union (The "CJEU") case law, reproduction rights are to be interpreted broadly, covering both direct and indirect copying by any means or in any form, including temporary copies made during the processing of data. This suggests that using copyrighted works in training AI entails, at least constitutes, an act of extraction as well as reproduction, requiring authorisation from the rightsholders. Given that copyright operates fundamentally as an *opt-in* system, where all rights are *a priori reserved* by default, and preventative by nature, any use of copyrighted material without explicit permission should constitute an infringement. Exceptions to this principle, such as text and Data Mining (TDM), should not be the rule, even if no opt-out has been exercised.

Indeed, it is also worth recalling that the CDSM Directive provides for TDM-specific exceptions for the purpose of extraction and reproduction of copyright protected data. However, these would only apply to works accessed lawfully, and for which rightsholders can opt out of TDM usage. The very existence of this exception implies that TDM should be viewed as a copyright-relevant act.

Additionally, Gen-AI training is predominantly a commercial activity. While the current framework allows rightsholders to reserve rights through Article 4 of the CDSM Directive, the mechanism for enforcing these rights, particularly across diverse online sources, may benefit from further practical

guidance. Rightsholders who wish to withhold their works from AI training should have a straightforward and enforceable means to exercise this reservation (opt-out) control.

The EU AI Act explicitly mandates that providers of general-purpose AI ("GPAI") models must establish transparency regarding the copyrighted content used in training, in order to comply with EU copyright law. Should practical challenges in implementing these transparency obligations persist, especially for providers needing to identify and disclose large volumes of training data sources, further clarification or support could arguably improve compliance. In this spirit, the first Code of Practice for GPAI providers may already be an appropriate first step into clarifying these questions.

Finally, many rightsholders have implemented technical measures to reserve their rights, but rightsholders are "on their own" when it comes to deciding on how to declare their opt-out in a legally compliant and effective manner. Apart from opt-outs communicated in text form (e.g. in general terms and conditions), technical instructions (e.g. robot.txt files) are increasingly used to streamline these rights reservations, yet technical barriers to ensure consistent and effective enforcement still remain. Here again, additional guidance or support in technical tools could improve compliance and ensure rightsholders' reserved rights are respected in practice. Nevertheless, it should be required of AI developers to develop tools to assist in the communication of choice by rightsholders. Tools that currently exist are not fit for purpose

II.A PRACTICAL TOOLS, STANDARDS OR THE INTRODUCTION OF AN EU-WIDE DATABASE TO PROVIDE LEGAL CERTAINTY

Practical measures could perhaps contribute to more legal certainty in the EU regarding the opt-out system. However, it is essential to ascertain that such measures do not shift the compliance burdens and responsibility to ensure that rights are respected towards rightsholders.

First, AI systems can never evade their responsibility to take the necessary measures to ensure that all protected content, including all opt-outs and reservations in place, are respected. Although developing sector-specific technical means could improve the functionality of the opt-out system, particularly under Article 4(3) of the CDSM Directive, it is important to note that rightsholders should not be obliged – additionally to implementing opt-outs – to comply with whatever standard makes it easier for AI systems to comply with Article 4 of the CDSM Directive. Importantly, these standards should however not be of a mandatory nature and duly respect the Directive's provisions allowing rightsholder discretion in how they reserve their rights. Machine-readable opt-out markers, such as terms and conditions, masthead, metadata or conditions embedded on platforms could serve as flexible, non-burdensome solutions.

In this regard, the Commission launched in January 2025 a call for tenders for a feasibility study on establishing a central registry for opt-outs under the TDM exception. The study aims to assess the technical feasibility of enabling rightsholders to express TDM opt-outs, particularly in AI model training, as part of the implementation of the CSDMD. The tender remained open until 26 February 2025.

ACT believes that, while an EU-wide database could theoretically facilitate the respect of reservations for AI system providers, practical limitations and potentially sky-rocketing costs would in practice make such an approach challenging. Centralising such a vast range of copyright-protected works, given the constant changes in rights ownership and the potential for portions of works to be used in AI training, would be incredibly complex and resource-intensive. Furthermore, a database will not address the fundamental issue of transparency. Even the most comprehensive database will be useless unless AI providers are required to be transparent about the data they use for training, input and other purposes. Furthermore, compliance with the transparency obligations included in the AIA does not remove the obligation from AI developers to request permission to use protected content where an exception is inapplicable. Ensuring the accuracy and completeness of data on such a scale is difficult, which raises

concerns about who would manage and maintain such a database, as well as how to cover its ongoing running costs.

Additionally, any solution should comply with international copyright law, notably Article 5(2) of the Berne Convention, which prohibits mandatory formalities as a pre-condition for copyright protection. Therefore, an opt-out database should be of optional nature only and not introduce formality requirements that would contravene international copyright law.

A conditional precedent for such a database would also be that it is clarified who shall be authorised to declare the opt-out as the so-called "rightsholder" according to Article 4(3) of the CDSM Directive in such database. This is particularly relevant in the case of multiple rightsholders. For example, in the case of joint and/or collective works and/or licensing chains. In such cases, those who ultimately make the respective content available must be enabled to legally bindingly declare the opt-out with regard to any and all works contained/covered.

III. OUTPUT STAGE: AI ASSISTED OUTPUTS COULD ENJOY PROTECTION IF SHAPED BY HUMAN INVOLVEMENT AND COMPLIANT WITH EU COPYRIGHT LAW REQUIREMENTS

The EU copyright framework provides a structured approach to determining 'copyright eligibility' for works created with AI. When assessing said eligibility for copyright or related rights protection of content created by AI tools, several key aspects should be considered.

First, the foundational requirement under EU copyright law is that a work must be "original", defined by the CJEU as the "author's own intellectual creation." For a work to qualify, it must be shaped by human input that involves "creative freedom," "personal touch," and "free and creative choices," as discussed in CJEU cases like *Infopaq* (Case C-5/08) and *Painer* (Case C-145/10). This originality threshold is unlikely to be met by works fully generated by AI without human intervention, as AI lacks the personality and creative intent essential to warrant EU copyright protection. However, human-created elements that are incorporated into AI-generated work may very well be worthy of protection if they clearly demonstrate original and creative expression[2].

EU copyright law, in alignment with international treaties like the Berne Convention, implicitly requires human authorship, as inferred from the linkage of copyright to the author's lifespan and moral rights[3]. The CJEU's preference for human authorship is supported by rulings such as *Phil Collins* (Joined cases C-92/92 and C-326/92) and *Luksan* (Case C-277/10), emphasizing that copyright safeguards the rights of human creators. This reliance on human agency implies that copyright protection for AI-generated works may perhaps benefit from international clarification, whereas the current EU thinking clearly favours human-created content.

While fully AI-generated works may not qualify, works created with substantial human assistance may meet the originality requirement. This would involve human oversight or guidance that affects the final output in a creative way. The assessment, therefore, should consider the extent of human control or input that guided the AI's output, with courts determining eligibility on a case-by-case basis. For example, if a person makes "free and creative choices" in curating, modifying, or integrating AI-generated elements, the resulting work might still embody the originality required for copyright.

Additionally, Copyright protection is granted to any literary or artistic works that comply with the requirements laid down in Art. 2(1) of the Berne Convention. There is no definition of what is and what is not a literary or artistic work within the EU. Nevertheless, to be protected, a work must have sufficient

[2] *See generally:* Rosati, E. "*Originality in EU Copyright*" (2013) Edward Elgar Publishing.
[3] Ramalho, A. "Will Robots Rule the (Artistic) World? A Proposed Model for the Legal Status of Creations by Artificial Intelligence Systems" (2017).

precision and objectivity to be classified as a protectable subject matter under copyright. This principle, as established in *Levola Hengelo* (Case C-310/17), requires that the work be identifiable and distinct.

Due to the complexities of AI-assisted creations, eligibility for copyright protection should be evaluated on a case-by-case basis. Courts would play a pivotal role in determining whether the human input involved meets the originality requirement, ensuring that each case is weighed based on the level of creative involvement by a human author.

However, in order to allow accurate judgment on the extent of human control versus AI-generated input, it will be necessary to provide means to tell both elements apart. Rightsholders will find themselves in situations where they either will have to prove the presence of a human element or disprove the use of generative AI. To enable a distinction to be made at all, it would be necessary to implement a legal obligation for watermarking of AI-generated output, wherever this is possible in view of the nature of the respective work. This copyright-induced obligation is to be distinguished from the obligations on transparency set out under the AIA since it serves evidentiary purposes instead of aims as to the protection of the public. Addressees of such obligation should be providers of Gen-AI-tools.

III.A NO "SUI GENERIS" RIGHT SHOULD BE CREATED FOR AI-ASSISTED WORKS AND OUTPUTS

The rationale behind incentivising human creativity through exclusive intellectual property rights remains relevant in the case of "AI-assisted" works. Traditional justifications for intellectual property protection, such as the utilitarian and labour theories, all suggest that incentivising creative work benefits society as a whole, either by enhancing social welfare or by ensuring fair compensation for an individual's effort[4]. Even in AI-assisted works, human creativity, intellectual labour, and decision-making are involved, as AI merely provides tools or inputs that assist rather than replace human authorship.

In terms of utilitarian theory, providing exclusive rights for AI-assisted works can still encourage creators to innovate, given that such protections support the economic viability of creative professions. Similarly, labour theory supports copyright for these works since the final product is still shaped by the individual's labour and skill, even if partially facilitated by AI. Limiting intellectual property protections based on the involvement of AI might actually discourage the adoption of AI as a creative tool, ultimately impacting cultural and technological advancements.

Therefore, the rationale for IP protection holds significance in the context of AI-assisted works, as it ensures that human creators retain incentives to innovate, while society benefits from increased creative output and access to diverse forms of expression.

AI outputs do not require new copyright rules, such as *sui generis* or related rights. AI-generated content lacks the "personal touch" and creative intent associated with human authorship. Research indicates that AI models relying on AI-generated outputs, rather than original human-created content, can progressively lead to diminished quality, inaccuracies, and biases. Human creativity should therefore remain central to copyright law, as it underpins cultural and artistic progress. Introducing sui generis rights for AI outputs would risk shifting focus away from this human-driven creativity. Instead, the focus should remain on upholding established copyright principles that prioritise human creativity, adapting these principles where necessary to ensure AI-related cases are addressed fairly.

The principles of copyright law, such as originality and authorship, are designed to be technology-neutral and adaptable to various contexts, including AI. Copyright law has effectively addressed other technological developments in the past, like the introduction of digital media, without the need for fundamental changes to its substance. As such, applying these principles to AI-generated or AI-assisted

[4] *See generally*: William Fisher, Theories of Intellectual Property (Cambridge, 2001).

works would be a more sustainable approach than creating new rules that may eventually become redundant as the technology evolves.

Additionally, the CJEU has demonstrated that it can interpret copyright law to account for new technologies, as illustrated by the CJEU's *Mircom* decision (C-597/19) on peer-to-peer file sharing, where existing copyright principles were successfully applied to a novel context. This suggests that the CJEU is well-positioned to handle cases involving AI-assisted works by interpreting existing rules. Creating an additional, separate legal framework could lead to conflicts or inconsistencies and might accidentally undermine the role of judges in interpreting evolving technologies within well-established and proven copyright principles.

Finally, without adequate protection, introducing *sui generis* rights for AI-generated outputs could effectively reward companies that use copyrighted data without authorisation, and disproportionately benefit large tech companies that own AI platforms and have the resources to train models on vast datasets. Ultimately, only a handful of companies own or control the necessary computing power. This could lead to these companies holding exclusive rights over AI-generated content derived from unlicensed copyrighted material, thereby strengthening their market dominance at the expense of individual creators and smaller companies. This could increase costs, complicate licensing, and further marginalise individual rightsholders who already might be vulnerable in a market where gatekeepers increasingly control key platforms.

IV. TRANSPARENCY, LABELLING AND WATERMARKING: NO ADDITIONAL LABELLING OBLIGATIONS NEEDED FOR AI GENERATED CONTENT.

Audiovisual media services are already required by national regulations to handle information responsibly and avoid misleading viewers. This creates a highly curated environment, where viewers are protected through proactive measures by service providers the oversight of regulators. Therefore, no additional labelling obligations should be imposed on such deployers of generative AI. The AI act already introduces transparency obligations for deep fakes, which apply to deployers, ensuring that AI-created content is clearly identified without new mandates. Additional labelling obligations may be impractical or disruptive, particularly in complex works like films or TV shows, where AI may be used in varied production stages.

The exemption in Article 50 (4) of the AIA to the labelling obligation to AI-generated content that has undergone a process of human review or editorial control and where a natural or legal person holds editorial responsibility for the publication of the content is of crucial importance.

However, challenges remain in the online space. Some of ACT members report significant difficulties with the growing prevalence of deep fakes on social media, which complicates fact-checking and strains editorial processes. In addition, there are more and more deepfakes using the image of artists featuring in broadcasters' programmes, within misleading advertisements and to promote scams. So far, the efforts by online platforms to monitor, detect, and remove harmful or misleading (i.e. disinformation) AI-generated content have been inadequate. Any action in this space – particularly with regard to the development and use of watermarking standards for deepfakes – is welcome. The AI Act requirement that AI system providers mark synthetic audio, image, video, or text outputs in a machine-readable format, making them detectable as AI-generated may be helpful in this regard.

Notwithstanding the abovementioned, a differentiated approach to watermarking or labelling based on content type (e.g., audio, visual, audiovisual, or textual) could sometimes be warranted in order to reflect distinct characteristics of each medium. Indeed, blanket requirements to disclose AI usage in content creation may not always be justified or effective. Furthermore, due consideration should be given to the environment in which content is distributed. In editorially controlled environments, when AI-generated elements are part of clearly creative works, and third-party rights are respected,

disclosure might only serve to disrupt the consumer experience, making a universal "one-size-fits-all" system impractical. AI-generated content undergoing human review or editorial control and subject to editorial responsibility should benefit from the exemption in Art. 50 (4) while all other AI-generated content needs to be marked and labelled.

V. REMUNERATION: A VOLUNTARY, DIRECT LICENSING FRAMEWORK WHERE RIGHSTHOLDERS REMAIN IN FULL CONTROL OF THEIR CONTENT IS ESSENTIAL

Rightsholders should remain in control of authorising Gen-AI ingestion of their works/exercising the opt-out foreseen in Article 4 of the CDSM Directive. Whether or not – and how – audiovisual rightsholders and distributors choose to license should be left at the discretion of arms-length negotiations between licensors and licensees. The European legislator should not intervene in prescribing licensing models, particularly not in a cross sectoral manner, and certainly avoiding extended collective licensing solutions that are clearly inappropriate and irrelevant in the absence of market failure situations as foreseen under Article 12 of the CDSM Directive.

In any event, the rightsholders need to be in a position to verify if their content has been used. At the EU level, a voluntary, direct licensing framework is essential to foster fair agreements between rightsholders and AI developers, especially in the AV sector. Different types of content (e.g., written, audio, audiovisual) each require tailored approaches as AV works, for instance, involve high production costs and unique licensing needs. Compulsory licensing (whether of the extended or mandatory kind), which imposes statutory terms and rates without rightsholder consent, is very ill-suited for such high-value, prototype-like content. It can undercompensate rightsholders, diminish control over content use, and increase difficulties in tracking royalties, especially once content is ingested into AI systems where usage can become difficult to trace. By contrast, direct licensing provides transparency and flexibility, allowing creators to maintain control and negotiate appropriate terms in line with industry practices, especially in the AV sector.

As demonstrated by emerging voluntary licensing models, certain AI developers are already licensing copyrighted works, showing that market-driven solutions work effectively. Thus, EU policy should focus on supporting such voluntary frameworks, and encouraging and facilitating licensing on fair and equitable terms, rather than imposing restrictive measures, which could disrupt existing licensing structures. Educating rightsholders on licensing options and ensuring developers are aware of the value of licensed works can enhance participation in these voluntary systems, further grow the Gen-AI licensing market and ultimately foster creativity and protect AI developers from potential litigation under current EU digital rules.

For smaller EU AI providers, facilitating access to quality training data should rely on market-based solutions, which continue to evolve. In ACT experience, voluntary licensing agreements are best-suited to address access challenges while respecting copyright and incentivizing creators.

In other words, EU policy should respect the integrity of copyright law by supporting voluntary, market-driven licensing schemes and should avoid measures that could distort this nascent Gen-AI market and hinder broadcasters' contractual freedom. Such an approach will allow the free market to reward creativity, foster innovation, and incentivize the responsible use of generative AI in a way that benefits both creators and AI developers.

Reflecting the content's value in itself and the specific usage rightsholders should be able to claim remuneration on an individual basis. This would enable rightsholders to retain full control over their content and freely determine appropriate terms for particular usage.

VI. LIABILITY FOR COPYRIGHT INFRINGEMENTS

The existing regulatory framework distinguishes between uses permitted under exceptions and those requiring explicit authorization from rightsholders. For instance, under Article 4 of the CDMS Directive, rightsholders have the option to reserve rights explicitly, preventing their works from being scraped for data mining purposes by commercial entities without authorization. If AI developers train models on data for which rights have been reserved, performing restricting acts other than those covered by the TDM exception, they must obtain explicit permission; otherwise, any such use would constitute a copyright infringement. This framework ensures that rightsholders maintain control over their content and receive fair compensation when AI models derive commercial value from it, aligning AI activities with established copyright principles.
A conditional precedent for this is again that the rightsholders are in a position to verify whether their content has been used.

Furthermore, copyright infringement may occur both at the input stage – when copyrighted content is used to train AI systems – and at the output stage, where generative AI models create 'new' content. Existing EU copyright principles, particularly the reproduction right and the exclusive right of adaptation, cover these scenarios. For example, if an AI model generates content substantially similar to a protected work used as training data, this could be treated as an infringement of the reproduction or adaptation rights. Courts can apply these principles flexibly, as they have done with other technologies, assessing whether the output work meets the "originality" threshold, as outlined in cases such as *Infopaq* (Case C-5/08).

The general rules on liability and the DSA provide further guidance on intermediary liability, which can extend to AI-related cases. If an AI system allows users to infringe copyright, such as by generating infringing content or recommending infringing products, the provider may be liable if they failed to implement safeguards or acted beyond playing a merely neutral and passive technical role. On the other hand, if an AI system is used legitimately but later misused by a third party, liability would fall to the user, not the provider, in line with the DSA's safe harbour provisions for neutral intermediaries.

Additionally, under the general framework, developers and users of AI systems have an obligation to implement reasonable safeguards to prevent copyright infringement. For instance, AI systems could be designed to recognize infringing patterns or refrain from generating outputs that closely resemble protected works. This duty of care aligns with the CJEU's approach in cases like *YouTube and Cyando* (C-682/18 and C-683/18), where platforms were required to implement "appropriate technological measures" to mitigate infringement risks in a credible manner.

It would be however essential that the GPAI Code of practice and the Draft AI template provide measures and summaries as detailed as possible for the exercise of rights, with references to established EU Copyright principles, and effective IP protection tools. For instance, measures to guarantee and give priority to opt-in solutions which is the best way forward to foster agreements between rightsholders and AI providers. Furthermore, in order to facilitate mediation and avoid costly disputes in terms of both time and money, the creation of an intermediary to deal with disputes in the specific context of copyright and AI should be considered.

In other words, existing EU copyright law, alongside the EU's general liability principle, offers a comprehensive and balanced approach to address copyright infringement in the context of Gen-AI. This framework allows courts to adapt established copyright principles to new technologies, ensuring that rightsholders' interests are protected without imposing new liability regimes.