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# The relationship between the AI Act and EU copyright law

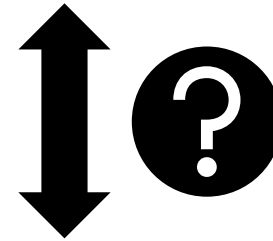
Prof. Dr. Alexander Peukert  
Goethe University Frankfurt am Main  
[a.peukert@jur.uni-frankfurt.de](mailto:a.peukert@jur.uni-frankfurt.de)

The overall legal framework concerning © and genAI

AI Act obligations concerning ©, Art. 53(1)(c) and (d)

Providers of general-purpose AI models (including FOS models) must

- (1) put in place a policy to comply with EU © law
- (2) make publicly available a sufficiently detailed summary about the training content



27 harmonised © laws

© MS1

© MS2

© MS3

... ©  
MS27

## Outline of the talk

- (1) Four contentious copyright law questions concerning AI
- (2) The AI law perspective on those questions
- (3) Relevance of the AI law perspective for the interpretation of EU copyright law
- (4) Addendum: applicability of EU copyright law to training reproductions in third countries

# 1. Four contentious copyright law questions concerning AI



# I. Can genAI training reproductions be permissible in accordance with Art. 4 DSMD?

- TDM in the sense of Art. 2(2) DSMD (“any automated analytical technique aimed at analysing text and data in digital form in order to generate information”)?
- Covered by DSMD of 2019?
- Compatibility with the three-step-test?

## II. When is an opt-out expressed in an appropriate manner under Art. 4(3) DSMD?

- The TDM use must not have “been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online”
  - preventive technical protocols such as robots.txt
  - or also machine-understandable human language reservations?

### III. Is protected content reproduced “in” the model?

- Yes: Munich I Regional Court – [GEMA v. OpenAI](#)
- No: High Court London – [Getty v. Stability AI](#);  
[Peukert 2026a](#)

## IV. Liability of the AI provider for infringing outputs?

- direct liability (Munich Regional Court [GEMA v. OpenAI](#))
- or limited indirect liability for insufficient copyright protection measures ([Peukert 2026b](#))?

## 2. The AI law perspective on these questions



## I. Can genAI training reproductions be permissible in accordance with Art. 4 DSMD?

- Recital 105 AI Act: The development and training of such models require access to vast amounts of text, images, videos and other data. **Text and data mining techniques may be used extensively in this context** for the retrieval and analysis of such content, which may be protected by copyright and related rights. ... Where the rights to opt out has been expressly reserved in an appropriate manner, providers of general-purpose AI models need to obtain an authorisation from rightsholders if they want to carry out text and data mining over such works.
- Art. 53(1)(c) AI Act: Providers of general-purpose AI models shall put in place a policy to comply with Union law on copyright and related rights, and **in particular to identify and comply with, including through state-of-the-art technologies, a reservation of rights expressed pursuant to Article 4(3) of Directive (EU) 2019/790;**

## II. When is an opt-out expressed in an appropriate manner under Art. 4(3) DSMD?

- Measure 1.3(1) of the GPAI CoP under Art. 56 AI Act:
  - robots.txt and subsequent versions
  - “other appropriate machine-readable protocols ..., for example ... asset-based or location-based metadata” as standardized internationally or on the EU level

### III. Is protected content reproduced “in” the model?

- Implications
- But: Models may be placed on the EU market even if they have been trained on non-licensed content.
  - Cf. training data summary under Art. 53(1)(d) and recital 107 (obligation to list “large private or public databases or data archives”, and to provide “a narrative explanation about other data sources used”).

## IV. Liability of the AI provider for infringing outputs?

- Measure 1.4 GPAI Code of Practice: Mitigate the risk of copyright-infringing outputs by
  - implementing appropriate and proportionate technical safeguards
  - prohibiting copyright-infringing uses.

### 3. Relevance of the **AI law** perspective for the interpretation of EU **copyright law**

Not relevant, because:

Copyright law

≠

AI law



But:

- Scope of application overlaps
- **Copyright law** expressly referenced in the **AI Act**
- Common aims of **copyright** and **AI law**

high level of  
© protection



promotion of  
innovative AI

fair balance

- Internal consistency of EU law
  - Art. 7 TFEU: The Union shall ensure consistency between its policies and activities
  - Courts have to ensure „the very unity of the EU legal order, *its consistency*, its full effect and its autonomy ...” (CJEU Grand Chamber 18 December 2025 Commission / Poland, Case C-448/23)
  - CJEU case law concerning the consistent interpretation of different secondary laws

 consistent interpretation of  
**copyright** and **AI law**

- I. AI training can qualify as permissible TDM
- II. Only technical protocols readable by crawlers are “machine-readable”
- III. An AI model is not an infringing copy of protected training content
- IV. Liability of AI providers regarding output infringements is limited to adequate preventive measures

## Overall consequence in a nutshell:

GPAIMs trained in accordance with Art. 4 CDSMD may be placed on the EU market if appropriate and proportionate copyright protection measures are in place.

## 4. Addendum: applicability of EU copyright law to training reproductions in third countries

# The **copyright** perspective: strict territoriality



The **AI Act** perspective, recital 106 3<sup>rd</sup> sentence AI Act:

- “Any provider placing a general-purpose AI model on the Union market should [put in place a policy to comply with EU copyright law], regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of those general-purpose AI models take place”.

Is recital 106 3<sup>rd</sup> sentence AI Act a valid argument to subject reproductions in third countries to EU copyright law?