



EUROPEAN GUILD
FOR ARTIFICIAL
INTELLIGENCE
REGULATION

AI applications in the visual arts

*The AI ACT and the importance of the protection
of European works, professions and cultural identity.*

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Artificial intelligence applied to arts and creativity

The AI applications allow to project hardware and software systems designed to provide the electronic processor with performances, such as a continuous learning, to reproduce or to imitate certain human capacities. Those applications lead to significant implications for each aspect of cultural, professional and social life of human beings, with ethical and practical consequences on which is time to question.

The field of arts and creativity is directly involved in this phenomenon. In fact, generative AIs are proposed on the art market as products aimed to offer a substitute service for the work of artists and creatives, producing outputs comparable to the works of a human being in terms of quality. The most famous example of this kind of AIs are "AI TTI Text To Image". The "artistic result" is achieved thanks to a simple textual brief from which images/drawings are processed. AI TTI is thus able to interpret a text language and use it to generate images. The result is based on an elaborated process of a previously gathered set of data/works. The quality of the final product (image or a drawing) depends essentially on the data/works collected over time. The higher the quality of the data/works, the better the processed image and its consequent competitiveness on market. Conversely, if poor data are entered, the processed product will be of low quality. Consequently, what defines the value of an AI TTI application are the works (images, drawings, sketches, etc.). For example, an application working on the dataset of a single visual style will be exclusively capable of reproducing images in that specific style. It is thus thanks to the content of the datasets, the works of artists in this case, that AI can express itself producing results that are also of remarkable quality and variety.

The escamotage of use for research and the theft of works on internet

Over the past few years, through the escamotage of the research use exception (U.S. fair use) many AI start-ups have been able to rake in billions of data/works on the web, the vast majority of which have been obtained without the consent of the rightful owners. Owners who, in most cases, were completely unaware that works on the web could be freely used and manipulated to be training tools for AI software. In a few years, we have seen the spin-off of these companies to create companies that instead have a manifest and public commercial intent. These are companies that have been able to offer services to users only through the use and exploitation of the works of thousands of designers, cartoonists, and illustrators from around the world. These companies, some of them publicly traded or participated in by Investment Funds, are getting rich by exploiting the work, talent, and creativity of professionals without ever having remunerated them.

The legal gap

The European Parliament is working on a Proposal for a Regulation (COM (2021) 2026) that aims to harmonize national AI regulations at the European level, leaving to the member states some subsidiary tasks related to supervision and sanctions. Currently, there is no national legislation in Italy or in any of the member states. The underlying spirit of the Regulation is to encourage the use and development of AI systems in certain areas, subject to the respect of fundamental rights of the European Union: human dignity, privacy, non-discrimination, etc. The European Commission's proposal focuses on so-called high-risk AI systems, but secondarily regulates other AI applications as well (Title IV).

For what concerns the application of AI systems on creative works and the protection of creative professions, the Regulation is entirely lacking. It is limited to only a few mentions, relating to the manipulation of images or audio and video content. There is no reference to the protection of the author and/or his preventive consent. The only obligation included is a generic obligation of transparency.

In the text proposed by the European Commission, whereas in letter c) of Article 1 there is an immediate explicit reference to the fact that the rules in the Regulation apply "also to AI systems used to generate or manipulate images or audio or video contents", there is - in the subsequent articles - only a single vague reference to this type of application.

Likewise, there is no reference to the protection of creative works even with generic references to the rules regarding intellectual property protection. Clear evidence of this is that Annex II of the Regulation refers to several directives that will later have to be harmonized, but among them seems not be those relating, for example, to copyright.

Some remarks on the importance of intellectual property protection in AI systems were raised in the opinions of the CULT and JURI Committees of the European Parliament. However, these are general references without any specific provisions.

Proposals for the protection of creative works from the exploitation of AI applications

In our opinion, the text of AI ACT should contain a specific section dedicated to the use of AI TTI in the creative arts and the protection of artists' works and data. There should be introduced rules that are consistent with the principles of intellectual property protection and personal data protection, harmonizing the AI ACT with the copyright and GDPR regulatory frameworks. It is necessary from the outset to avert the constant and ongoing web theft of works and data that has been taking place for some time without any control by European and national authorities.

It is unrealistic to think that an artist could file international lawsuits against multimillion-dollar corporations operating undisturbed in other continents, knowing the slowness, cost, and unpredictable outcomes of such lawsuits. For these reasons, we believe that the current proposed European AI ACT regulation should be significantly amended:

Introduction of the Training Right

- All data about persons or works, in whatever form, whether already digitized as text, audio, video or image files or captured from reality through cameras, microphones or any recording media, should not be allowed to be used for training AI models without the explicit informed consent of the rightful owners. Any individual data/work by third parties that is included in training models must be curated and authorized by the rightful owners and then voluntarily and informatively included by the individual authors. AI companies may produce original training materials in-house or license third-party content under contractual terms and conditions previously established with the authors concerned. Unless otherwise agreed between the Parties, the use of others' works by AI companies must be subject to appropriate and proportionate remuneration, including through licensing agreements with the rightful owner.

Mechanism of information and inhibition to user

- AI applications that allow a text or voice "prompt" to request the generation of an image, video, text or sound must provide mechanisms that inhibit the use of names of people, names of art or works that are not governed by an exploitation license for AI training.
- AI applications that allow content to be inserted to require the generation of an image, video, text, or sound must provide mechanisms that inhibit the use of video, images, sounds, and text that is not covered by an exploitation license for AI training.

Mechanisms of intervention, control and sanctions

- Provision should be made for an intervention mechanism upon notification to the National Authorities of the right-holder to enjoin the companies owning AI applications not to use data and works without the consent of the right-holders and a subsequent sanction procedure in case of non-compliance. A procedure lendable by the European E-commerce Directive.
- For companies owning AI applications that already operate in violation of existing European regulations (e.g., Copyright or GDPR), there must be full disclosure of the respective datasets with whom they have collected works and data without any consent. Such information must be communicated by companies to their respective rightful owners to obtain consent for use or request for removal from their training systems. Alternatively, they should provide systems for wide dissemination of information about the works used to the relevant categories so that rights holders can, within an appropriate time frame, request the removal of their works, including through professional representative organizations.



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- Introduce the sanction of algorithmic disgorgement, already used in the U.S. by the Federal Trade Commission, in cases where data-set disclosure cannot be made.
- Provide that national authorities conduct periodic spot checks on the datasets of the most widely used applications about the effective removal of unauthorized works for companies that have already placed AI TTI products on the market.

About Us

The EUROPEAN GUILD FOR AI REGULATION (www.egair.eu) is a nonprofit association that brings together creatives, visual artists, cartoonists, illustrators, voice actors together with publishing houses and professional unions from several European countries to propose to European institutions a regulation on the exploitation of data and creative works by AI companies. The initiative was spearheaded by Italian artists Lorenzo Ceccotti LRNZ and Francesco Archidiacono of MeFu, the Mestieri del Fumetto association, which has carried out intensive liaison work with networks of comics professionals across Europe in recent months, proposing the signing of a Manifesto in defense of human rights and creativity.

The Manifesto was signed by hundreds of world-renowned artists such as Milo Manara, Claire Wendling, Aleksi Briclot, and Greg Rutkowski, by the associations Central Vapoeur (BEL), Ligue des Auteurs Professionnels (FR), SNAC (FR), Illustratoren Organisation (DEU) AÉ ARTEesÉTICA (SP), Associazione Nazionale Attori Doppiatori (IT), European Illustrators Forum, CAA Concept Art Association (USA), by the publishing houses Bao, Coconino, and by comic book festivals such as ComiCon and ARF!

Concerns about AI TTI applications in the arts have stirred the global art community and led several parties to take an interest. Such is the case with the Concept Artists Association (CAA), which together with EGAIR is leading a movement for the regulation of generative AI companies in the United States.

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