

Q295

AI & Copyright

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9

Anonymous

36:11

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Contact details

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Hungarian Group

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I. Current law and practice

To answer all questions, please refer to the definition part above, especially for the terms "Copyrighted Data" and "Use of Copyrighted Data to Train AI System".

Please answer all questions in Part I on the basis of your Group's current law and practice.

5. **1)** Does your current law / practice contain laws, rules, regulations or case law decisions specifically relating to the Use of Copyrighted Data to Train AI System? Please answer YES or NO.

☒ Yes

☐ No

6. **1) (continued)** Please explain

The Hungarian Copyright Act (hereafter: CA) implemented Articles 3 and 4 of the Directive 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market.

§ 35/A (1) The reproduction required to the text and data mining (TDM) to be done upon works shall be a free use if

a) the access to the work used is lawful,

b) the rightholder has not objected to the free reproduction previously in an appropriate manner, via machine-readable means in the case of content made publicly available online, and

c) the copies required for the TDM are retained only for as long as is necessary for the purposes of TDM.

(2) Reproductions required for TDM to be done upon works for the purpose of scientific research carried out by research organisations and cultural heritage institutions [as defined by § 33/A paras (1) and (2)] shall be a free use, if

a) the person doing the research has a lawful access to the work used,

b) the copies done in the course of the free use are stored on an appropriate security label

c) the copies are preserved for the purpose of scientific research

(3) The persons as beneficiaries of the free use may make available the copies reproduced under paragraph(1) and (2)

a) within the framework of the research collaboration concerned, or

b) for the professional assessment of a scientific work for a closed circle of persons, on condition, that this use is not aimed, either directly or indirectly, at earning or increasing income. The communication to the public may be made only to the extent and for the period of time required for the purposes defined in this article

Remarks:

Under § 83 (2) of the CA the TDM exception applies to the holders of neighbouring rights.

Under § 84/D (2) of the CA the TDM exception applies to makers of database.

As a result the economic rights (reproduction rights if the protected content is used for the purpose of TDM) all affected rightholders of copyright are subject to the TDM exception.

Under § 33/A of the CA

- a 'research organisation' shall mean a university, including its libraries, a research institute, laboratory or hospital, or any other person or entity, including the researchers having a contractual relationship with the research organization, the primary goal of which is to conduct scientific research or to carry out educational activities involving also the conduct of scientific research carried out: on a not-for-profit basis or by reinvesting all the profits in its scientific research or in such a way that the access to the results generated by such scientific research cannot be enjoyed on a preferential basis by a person or entity that exercises a majority influence upon such organisation;

- 'text and data mining' means any automated analytical technique aimed at analysing text and data in digital form in order to explore information,

- cultural heritage institution' means a publicly accessible library or museum, an archive or a film or audio cultural heritage institution.

If the preparation of the dataset from the data scraped involves reproduction, as this might be a case, there is no specific reproduction thereof in the rules we cited above. This reproduction – if any- is subject to the general provision on the exclusive reproduction right of the affected rightholders.

7. **Does the Use of Copyrighted Data to Train AI System have to be authorised by the Copyright holder?**

2) Does the Use of Copyrighted Data to Train AI System fall within the scope of the Economic Rights monopoly, i.e. does it require the authorisation of the Copyright holder unless covered by an Exception? Please answer YES or NO.

☒ Yes

☐ No

8. **2) (continued)** Please explain, e.g. if the authorisation is necessary only if acts of reproduction, representation, etc. are carried out, or in any circumstances (even if no act of reproduction, representation, communication, etc. has been carried out).

Only reproduction made for the purpose of TDM - to be interpreted narrowly in light of the three step test - shall be a free use. Any other reproductions, or acts that qualify as usage (exploitation under the CA) fall within the scope of Economic rights monopoly. Acts that do not qualify as usage under the CA are not covered by the Economic Rights monopoly, but in some specific cases may be covered by the integrity rights of the authors and performers on condition that the source works/performances can be identified and the acts (alterations) are derogatory to the honour and reputation of the author /performing artists.

9. **3)** Are there any Exceptions that authorise the Use of Copyrighted Data to Train AI System without Copyright holder consent?

No.

10. **3) a)** General Exceptions to Copyright, i.e. which are not special to the Use of Copyrighted Data to Train AI System (e.g. fair use, intermediate storage/temporary reproduction, etc.)? Please answer YES or NO.

☐ Yes

☒ No

11. **3) a) (continued)** Please explain, e.g. the conditions of application of each Exception separately.

12. **3) b)** Special Exceptions to the Use of Copyrighted Data to Train AI System (e.g. Text and Data Mining -TDM Exception, etc.)? Please answer YES or NO.

☒ Yes

☐ No

13. **3) b) (continued)** Please explain e.g. the conditions of application of each Exception separately.

Yes. The TDM exception. Please see also our answer to Q 1. if the TDM is made by research organisations or cultural heritage institutions for the purposes and within the framework as described in the answer to Q 1 (§ 35/A (2) CA), the use of the exception may not be objected to by the rightholder. Any other reproduction if made for TDM might be free use if the conditions under § 35/A (2) CA are met. Thus this exception may be objected to via a lawful reservation (in other words: objection or opt-out) that is made by the rightholder. Since the entire AI "world" is global, and the Use of Copyrighted Data to Train AI System occurs online, the crucial question is, how a lawful machine readable reservation can be made. This issue is not answered yet. Those rightholders (collective management organizations) that made such reservations, exercised the reservation right by means of texts in HyperText Markup Language, and a robots.txt file. This latter reservation would indicate for those who search/crawl websites, that the use of the site's data for text and data mining is prohibited unless explicit consent is obtained from the copyright holder. To make the reservation workable, it is important that those, who were granted license from the collective management organizations for online uses, apply the robots.txt file reservation on all platforms where the licensed online use occurs.

14. **4)** Do the Exceptions provide for financial compensation for Copyright holders (e.g. a royalty paid to a collecting society, etc.)? Please answer YES or NO.

☐ Yes

☒ No

15. **4) (continued)** Please explain

16. **5)** Can the author object to Use of Copyrighted Data to Train AI System on the basis of his/her Moral Rights (for example on the basis of the right to integrity, paternity, etc.)?

Yes.

17. **5) (continued)** Please explain

There is no provision to exclude the exercise and enforcement of moral rights. On condition that the work /performance can be identified and the omission of the name of the author/performer is missing, the paternity right can be invoked, since the Use of Copyrighted Data to Train AI System involves reproduction. The exercise of the integrity right – the condition of the identification of the work/performance applies - does not require an actual usage. Any act most frequently alteration if derogatory for the honour and reputation of the author/performing artist may violate the integrity right, but in most cases the violation is committed via a usage of the work/performance. Even if a use for parody or pastiche (free "alteration") may violate the integrity right.

18. **6)** Does the Provider of an AI System have to make public the training data used to train the AI System (transparency obligation)? Please answer YES or NO

☐ Yes

☒ No

19. **6) (continued)** If YES, please explain the degree of detail required (all works, categories according to sources - websites, etc.) and whether the developer / operator must keep the list of training data or the training data itself for a certain period of time?

Re: 6): NO. For the time being there is no such specific obligation. One could argue that those reproductions made for TDM purposes that do not fall within the scope of the relevant exception are ordinary usages, and under § 16 (7) of the CA " Unless otherwise provided by this Act or in the Act on collective management of copyright, the user shall inform the author or his legal successor, or the collective management organisation on the manner and extent of the use", but this opinion is rather an educated guess since no court decisions corroborate this view so far.

20. **The consequences of unauthorised Use of Copyrighted Data to Train AI System**

To answer questions 7 to 10, please consider that the Use of Copyrighted Data to Train AI System falls within the scope of the Economic Rights monopoly (no Exception can be invoked) but is made without the consent of the Copyright holder.

21. **Infringing items**

7) Can the contents created (output) by an AI System be qualified as Copyright infringement in the following cases?

22. **7) a)** The output contains characteristic elements of one or more Copyrighted Data to Train AI System? Please answer YES or NO.

☒ Yes

☐ No

23. **7) a) (continued)** Please explain

The Economic Rights cover the entire works, or identifiable parts of the work the original title of the work, and the original characters of the work as well.

24. **7) b)** The output is in the same style as one or more Copyrighted Data used to train AI System? Please answer YES or NO.

☒ Yes

☐ No

25. **7) b) (continued)** Please explain

Yes, if the style is not understood as style trend in general (e.g. an impressionist painting), but is understood as the bundle of the original and unique style elements as used by the author within a style trend. In this case style is a part of originality.

26. **7) c)** The output is in all cases infringing if it has been trained with one or more infringing Copyrighted Data. Please answer YES or NO.

☐ Yes

☒ No

27. **7) c) (continued)** Please explain if needed.

To the best of the knowledge of the Hungarian Working Group the "production" of the output occurs in a black box. The deep learning software of the AI system searches for patterns and manufactures a statistical model, as an output, but we do not exactly know, how this model is developed. As a result one may not state that this activity qualifies as a usage in terms of copyright.

28. **7) d)** In other cases? Please answer YES or NO.

☐ Yes

☒ No

29. **7) d) (continued)** Please explain

30. **8)** Can the AI System itself be considered to infringe Copyright? Please answer YES or NO.

☐ Yes

☒ No

31. **8) (continued)** If YES, please explain, e.g. under what conditions.

This is a technology, a software with a specific functionality of data processing.

32. **Infringer**

9) Who is liable in case of Copyright infringement?

It depends on the circumstances. Please see under 9/a-9/c.

33. **9) a)** The Provider of an AI System? Please answer YES or NO.

☒ Yes

☐ No

34. **9) a) (continued)** Please explain if needed.

And the provider of the AI system shall be held liable for its vicarious agents who contributed to the crawling and/or making the dataset.

35. **9) b)** The user who exploits commercially the AI System? Please answer YES or NO.

☒ Yes

☐ No

36. **9) b) (continued)** Please explain if needed.

Yes, with a limited liability (provision of data), as a contributor: as a person who was using the infringing services on a commercial scale; or was named by the AI service provider as participating in the provision of the services. This view is subject to the GTC of the AI service provider.

37. **9) c)** The final user? Even if acting in good faith or unaware of the infringement? Please answer YES or NO.

☒ Yes

☐ No

38. **9) c) (continued)** Please explain if needed.

Yes, with a limited liability (provision of data), as a contributor: as a person who was using the infringing services on a commercial scale; or was named by the AI service provider as participating in the provision of the services. This view is subject to the GTC of the AI service provider.

(This person may be held liable for direct copyright infringement if his/her achievement based on the model produced by the AI service provider qualifies as a copyrighted work, which is used, and this person omits to seek authorization.)

39. **9) d)** Any other person? Please answer YES or NO.

☐ Yes

☒ No

40. **9) d) (continued)** Please explain if needed.

41. **Sanctions**

10) What sanctions can be imposed if it is found that Copyright has been infringed in order to train the AI System (because Copyrighted Data has been used with no authorisation)?

The system of sanctions under the CA [§ 94] (1) és (2)) looks as follows:

Preventive/corrective sanctions:

The author may request, that the

- court establish that there has been an infringement;
- infringement and all acts directly threatening with infringement cease and that the infringer be prohibited from any further infringement;
- infringer make redress, by a statement or in any other appropriate manner, and that such redress, if necessary, be given appropriate publicity by the infringer and at the expense of the infringer;
- injurious state of affairs be terminated, and that the previous condition be restored, materials and devices used exclusively or primarily for the infringement be seized, delivered to a designated party, withdrawn permanently from commercial circulation or be destroyed.
- injurious state of affairs be terminated, and that the previous condition be restored, materials and devices used exclusively or primarily for the infringement be seized, delivered to a designated party, withdrawn permanently from commercial circulation or be destroyed.
- court order, at the expense of the infringer, the publication of the court decision. The mode of publication shall be decided by the court. Publication shall in particular mean publication in a national newspaper or on the internet.

Auxiliary sanctions to help enforcing financial sanction:

the author may request that the

- infringer provide information on the parties involved in the production, distribution or performance of goods or services affected by the infringement, as well as on the business relationships established by the infringing acts;

Financial sanctions:

the author may request

- the recovery of the enrichment achieved through the infringement;
- compensation of material damages under the rules of civil liability.
- solatium doloris (recompense) in the event of infringement of the moral rights in accordance with the general rules of civil law.

42. **10) a)** Injunction, destruction, etc. of Copyrighted Data used to Train AI System still present in the data set or in the AI System? Please answer YES or NO.

☒ Yes

☐ No

43. **10) a) (continued)** Please explain if needed.

If we presume that the Copyrighted Data can be identified and if they are still present in the data set or in the AI system, and separated, all corrective sanctions can be imposed on the AI service provider that render it possible to terminate copyright infringement. If the separation is possible there is no reason to apply the sanctions to those parts of the service that can be provided lawfully.

44. **10) b)** Injunction, destruction, etc. of the AI System itself deemed to be infringing, because it has been trained with infringed Copyrighted Data? Please answer YES or NO.

☒ Yes

☐ No

45. **10) b) (continued)** Please explain if needed.

Yes, on condition that the Copyrighted Data can although be identified but they are either not present in the data set made or in the AI system in their identifiable form, and/ or they cannot be separated. In this case all corrective sanctions can be imposed on the AI service provider that render it possible to terminate copyright infringement. In lack of the separability all sanctions have to be imposed on the entire system. In such case there is a well-founded reason to apply the sanctions to the entire AI system.

46. **10) c)** Injunction, destruction, recall from commercial channels, etc. of outputs deemed to be infringing? Please answer YES or NO.

☒ Yes

☐ No

47. **10) c) (continued)** Please explain if needed.

Yes, together with the sanctions imposed on the AI system. We presume that the Copyrighted Data can be identified but they are either not present in the data set made or in the AI system in their identifiable form, and/ or they cannot be separated. In this case all corrective sanctions can be imposed on the AI service provider that shall extend to the output that render it possible to terminate and prevent further copyright infringement. In lack of the separability all sanctions have to imposed on the entire system. These sanctions are effective only, if the use of the output (statistical model) can be prevented. In such case there is a well-founded reason to apply the sanctions to the entire AI system and the output.

48. **10) d)** The award of damages, including punitive damages? Please answer YES or NO.

☒ Yes

☐ No

49. **10) d) (continued)** Please explain if needed.

Yes, but without statutory damages it might be extremely difficult to calculate material harm. The culpability as the most important precondition of tort liability can be regarded as given. The AI service provider did not act with due care to be expected under the given circumstances in the collection of data (the sources of the data set) and/or the preparation of the data set. Our legal system includes the so-called general compensation damages, that may be applied if the amount of compensation cannot be exactly calculated. Our law does not provide for punitive damages.

50. **10) e)** Confiscation of all or part of the profits generated by the operation of the AI System? Please answer YES or NO.

☒ Yes

☐ No

51. **10) e) (continued)** Please explain if needed.

The recovery of profit is a more suitable financial sanction than the compensation of damages, since it has a mandatory minimum under the court practice, and the culpability of the infringer is not a precondition. The minimum of the recoverable profit is the unpaid license fee. It means that also infringements with a loss can properly be sanctioned.

52. **10) f)** Any other sanctions? Please answer YES or NO.

☒ Yes

☐ No

53. **10) f) (continued)** Please explain if needed.

The making public of the relevant part of the court decision. By imposing this sanction the public (in particular the consumers) can be informed about the infringing practice of the AI service provider.

To order the infringer to make redress, by a statement or in any other appropriate manner, and that such redress, if necessary, be given appropriate publicity by the infringer and at the expense of the infringer.

54. **In which other situations can outputs be qualified as Copyright infringement?**

11) Please explain, if and under what conditions outputs generated by an AI System are qualified as infringement of a Copyrighted work, e.g. because the output contains characteristic elements of the Copyrighted work, in the following cases:

11) a) In case the Use of the Copyrighted Data (work) to Train the AI System is covered by an Exception. Please answer YES or NO.

☐ Yes

☒ No

55. **11) a) (continued)** Please explain if needed.

56. **11) b)** In case the Copyrighted work has NOT been used to train the AI System. Please answer YES or NO.

☐ Yes

☒ No

57. **11) b) (continued)** Please explain if needed.

58. **11) c)** In case the Use of the Copyright Data to Train AI System has been authorised, is the content generated (output) always licit, even if some for instance outputs contain characteristic elements of the Copyrighted work? Please answer YES or NO.

☐ Yes

☒ No

59. **11) c) (continued)** Please explain if needed.

60. **12)** Who is liable in case outputs infringes Copyright?

12) a) The Provider of an AI System? Please answer YES or NO.

YES.

61. **12) a) (continued)** Please explain if needed.

The Provider of an AI system, if there is evidence of "direct" infringement of the output. It may occur only if the source Copyrighted Data can be identified, and the "production" of the output can be regarded as a usage. It might occur only if the court regards usage as an exploitation of protected content on an abstract level. In our CA usage is any act (exploitation) that makes the work perceptible. The actual perception is not required. As a result, if the source Copyrighted data can be identified, the making of the output might be regarded as an exploitation in terms of the general term of usage.

62. **12) b)** The user who exploits commercially the AI System? Please answer YES or NO.

☐ Yes

☐ No

63. **12) b) (continued)** Please explain if needed.

Please see our answer to 11.

64. **12) c)** The final user? Even if acting in good faith or unaware of the infringement? Please answer YES or NO.

☐ Yes

☐ No

65. **12) c) (continued)** Please explain if needed.

Please see our answer to 11.

66. **12) d)** Any other person? Please answer YES or NO.

☐ Yes

☒ No

67. **12) d) (continued)** Please explain if needed.

II. Policy considerations and proposals for improvements of your Group's current law

68. **13)** Could any of the following aspects of your Group's current law or practice relating to the Use of Copyrighted Data to Train AI System be improved?

☒ Yes

☐ No

69. **13) a)** Use of Copyrighted Data to Train AI System require prior authorisation of the Copyright holder? Please answer YES or NO.

☒ Yes

☐ No

70. **13) a) (continued)** Please explain if needed.

Yes, in the event of a lawful reservation. (The legal framework is given, but there is uncertainty, how a lawful reservation can be made.)

71. **13) b)** Exceptions authorising the Use of Copyrighted Training Data without Copyright holder consent. Please answer YES or NO.

☐ Yes

☒ No

72. **13) b) (continued)** Please explain if needed.

73. **13) c)** Consequences of illicit Use of Copyrighted Data to Train AI System.

13) i) What can be qualified as infringing products, e.g. outputs and/or AI System itself? Please answer YES or NO.

☒ Yes

☐ No

74. **13) c) i) (continued)** Please explain if needed.

Yes, if the source Copyrighted Data can be identified in the output product. (The legal framework is given, but in lack of appropriate transparency rules the identification of the protected content (Copyrighted Data) is close to the impossible.)

75. **13) c) ii)** The sanctions that should be available in case an AI System has been recognised to have been trained with infringed Copyrighted Data without authorisation? Please answer YES or NO.

☐ Yes

☒ No

76. **13) c) ii) (continued)** Please explain if needed.

The system of sanctions is satisfactory save for the lack of punitive and statutory damages. Please see also our general proposal in the answer to Q 21.

77. **14)** Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question? Please answer YES or NO.

☐ Yes

☒ No

78. **14) (continued)** Please explain.

III. Proposals for harmonisation

Please consult with relevant in-house / industry members of your Group in responding to Part III.

79. **15)** In your opinion, should Use of Copyrighted Data to Train AI System be harmonised? Please answer YES or NO.

☒ Yes

☐ No

80. **15) (continued)** Please explain

The usage made by AI systems (first of all the reproduction) has always global impact, no matter on which territory the actual crawling and the "creation" of the dataset occurs, since the output products are offered globally. As a result the "basic" reproduction of the Copyrighted Data in the course of the training should be a harmonised term.

The international harmonisation is however at present extremely challenging.

81. **15)** If YES, please respond to the following questions without regard to your Group's current law or practice. Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

82. **Should the Use of Copyrighted Data to Train AI System be authorised by the Copyright holder?**

16) Should the Use of Copyrighted Data to Train AI System fall within the scope of the Economic Rights monopoly, i.e. should it require the authorisation of the Copyright holder as a matter of principle, unless covered by an Exception? Please answer YES or NO.

YES.

83. **16) (continued)** Please explain, e.g. if the authorisation should be necessary only if acts of reproduction, representation, etc. are carried out, or in any circumstances.

Yes, as we described in more answers, e.g. in our answer to Q 12 and 15.

84. **17)** Should there be Exceptions that allow the Use of Copyrighted Data to Train AI System without Copyright holder consent:

17) a) General Exceptions to Copyright, i.e. which are not special to the Use of Copyrighted Data to Train AI System (e.g. fair use, intermediate storage / temporary reproduction, etc.)? Please answer YES or NO.

☐ Yes

☒ No

85. **17) a) (continued)** Please explain, e.g. the conditions of application of each Exception separately.

86. **17) b)** Special Exceptions to the Use of Copyrighted Data to Train AI System (e.g. TDM Exception, etc.)? Please answer YES or NO.

☒ Yes

☐ No

87. **17) b) (continued)** Please explain e.g. the conditions of application of each Exception separately.

Yes, TDM exception for the analysing of data in order to gain new information.

88. **18)** Should the Exceptions provide for financial compensation for Copyright holders (e.g. a royalty paid to a collecting society, etc.)? Please answer YES or NO.

☒ Yes

☐ No

89. **18) (continued)** Please explain

Yes, if the exception applies to GENAI too. In this case the application of TDM exception is dubious, since the objective is not to generate new information, but to elaborate on a product that can substitute Copyrighted Data. Those, who opt out from the TDM exception, regain their exclusive rights. Those, who do not opt out should be compensated by a remuneration right.

90. **19)** Should the author be able to object to the Use of Copyrighted Data to Train AI System on the basis of his / her Moral Right (e.g. on the basis of the right to integrity, paternity, etc.)? Please answer YES or NO.

☒ Yes

☐ No

91. **19) (continued)** Please explain if needed

Yes, the right of paternity and that of integrity shall be exercisable in all cases, where the Copyrighted Data can be identified.

92. **20)** Should the Provider of an AI System be obliged to make public the training data used to train the AI System (transparency obligation)? Please answer YES or NO.

☒ Yes

☐ No

93. **20) (continued)** If YES, please explain, e.g. the degree of detail that should be required (all works, categories according to sources - websites, etc.) and whether the company should keep the list of training data or the training data itself for a certain period of time?

Yes, the transparency is the key to the balance between the interest of AI system developers and the holders of copyright. The transparency shall mean the disclosure of all data that render the identification of the work possible (in case of musical works: ISWC code, in case of phonograms: ISRC Code, in case of other protected content the appropriate code used by the industry to identify the protected content). It goes without saying that the big rightholders (e.g. phonogram producers, film producers, collective management organizations) should be obliged to make access to the databases that include the identifying codes.

94. **The consequences of unauthorised Use of Copyrighted Data to Train AI System**

To answer questions 21 to 24, please consider that the Use of Copyrighted Data to Train AI System falls within the scope of the Economic Rights monopoly (no Exception can be invoked) but is made without the consent of the Copyright holder.

95. **Infringing items**

21) Should the contents created (output) by the AI System be qualified as Copyright infringement in the following cases?

21) a) The output contains characteristic elements of one or more Copyrighted Data to Train AI System? Please answer YES or NO.

☒ Yes

☐ No

96. **21) a) (continued)** Please explain if needed.

The Economic Rights shall cover the entire works, or identifiable parts of the work the original title of the work, and the original characters of the work as well.

97. **21) b)** The output is in the same style as one or more Copyrighted Data used to Train AI System? Please answer YES or NO.

☒ Yes

☐ No

98. **21) b) (continued)** Please explain if needed.

Yes, if the style is not understood as style trend in general (e.g. an impressionist painting), but is understood as the bundle of the original and unique style elements as used by the author within an style trend). In this case style is a part of originality.

99. **21) c)** The output is in all cases infringing if it has been trained with one or more infringed Copyrighted Data. Please answer YES or NO.

☒ Yes

☐ No

100. **21) c) (continued)** Please explain. if needed.

Such a situation is now cannot to be regarded as an infringement, but in the future this act should be considered to be an infringement even if the Copyrighted Data cannot be identified. To achieve this goal a holistic approach of the act of usage would be necessary. If the actual usage (e.g. reproduction of a given Copyrighted Data) cannot be proved, but it is certain that the AI system used Copyrighted Data to produce an output, it should be regarded as a usage. The reason of this approach is the GENAI system outputs can fully substitute the works created by humans on the market, and cannibalize the incomes of the authors/copyright owners. Since licensing is out of question, without identified Copyrighted Data a remuneration system should be introduced to ensure a fair compensation. This system could be developed following more or less the system of the domaine public payant.

101. **21) d)** In other cases? Please answer YES or NO.

☐ Yes

☒ No

102. **21) d) (continued)** Please explain if needed.

103. **22)** Should the AI System itself be considered a Copyright infringement? Please answer YES or NO.

☒ Yes

☐ No

104. **22) (continued)** If YES, please explain, e.g. under which conditions.

Yes, following the logic of the previous answer.

105. **Infringer**

23) Who should be liable in case of Copyright infringement by the outputs ?

23) a) The Provider of an AI System? Please answer YES or NO.

☒ Yes

☐ No

106. **23) a) (continued)** Please explain if needed.

The Provider of an AI System could be held liable for the Copyright Infringement. Here the same logic could be followed as that of the private copy remuneration (manufacturer and/or importer of equipment and media is liable for the compensation that is caused by private copying made by end user of such equipment and media. Those persons should be held liable who made it possible to produce and use "products" that are suitable to substitute the Copyrighted Data that was used to train the system.

107. **23) b)** The user who exploits commercially the AI System? Please answer YES or NO.

☐ Yes

☐ No

108. **23) b) (continued)** Please explain if needed.

Please see the previous answer.

109. **23) c)** The final user? Even if acting in good faith or unaware of the infringement? Please answer YES or NO.

☐ Yes

☐ No

110. **23) c) (continued)** Please explain if needed.

Please see the previous answer.

111. **23) d)** Any other person? Please answer YES or NO.

☐ Yes

☒ No

112. **23) d) (continued)** Please explain if needed.

113. **Sanctions**

24) What sanctions should be imposed if it is found that Copyright has been infringed in order to train the AI System, because Copyrighted Data has been used with no authorisation?

24) a) Injunction, destruction, etc. of Copyrighted Data used to train AI System still present in the dataset or in the AI System? Please answer YES or NO.

☒ Yes

☐ No

114. **24) a) (continued)** Please explain if needed.

As for 24): If we presume that the Copyrighted Data can be identified and if they are still present in the data set or in the AI system, and separated, all corrective sanctions can be imposed on the AI service provider that render it possible to terminate copyright infringement. If the separation is possible there is no reason to apply the sanctions to those parts of the service that can be provided lawfully.

As for 24)a): Yes, on condition that the Copyrighted Data can although be identified but they are either not present in the data set made or in the AI system in their identifiable form, and/ or they can not be separated. In this case all corrective sanctions can be imposed on the AI service provider that render it possible to terminate copyright infringement. In lack of the separability all sanctions have to imposed on the entire system. In such case there is a well-founded reason to apply the sanctions to the entire AI system.

115. **24) b)** Injunction, destruction, etc. of the AI System itself deemed to be infringing, because it has been trained with infringed Copyrighted Data? Please answer YES or NO.

☒ Yes

☐ No

116. **24) b) (continued)** Please explain if needed.

We presume that the Copyrighted Data can be identified but they are either not present in the data set made or in the AI system in their identifiable form, and/ or they cannot be separated. In this case all corrective sanctions can be imposed on the AI service provider that shall extend to the output that render it possible to terminate and prevent further copyright infringement. In lack of the separability all sanctions have to imposed on the entire system. These sanctions are effective only, if the use of the output (statistical model) can be prevented. In such case there is a well-founded reason to apply the sanctions to the entire AI system and the output.

117. **24) c)** Injunction, destruction, recall from commercial channels, etc. of outputs found to be infringing? Please answer YES or NO.

☒ Yes

☐ No

118. **24) c) (continued)** Please explain if needed.

Yes, in line with the previous answer.

119. **24) d)** Award of damages, including punitive damages? Please answer YES or NO.

☒ Yes

☐ No

120. **24) d) (continued)** Please explain if needed.

Yes, but without statutory damages it might be extremely difficult to calculate material harm, and the lack of punitive damages makes it difficult to properly sanction the infringement. The culpability as the most important precondition of tort liability can be regarded as given. The AI service provider did not act with due care to be expected under the given circumstances in the collection of data (the sources of the data set) and/or the preparation of the data set.

121. **24) e)** Confiscation of all or part of the profits generated by the operation of the AI System? Please answer YES or NO.

☒ Yes

☐ No

122. **24) e) (continued)** Please explain if needed.

The recovery of profit is a more suitable financial sanction than the compensation of damages, since it has a mandatory minimum under the court practice, and the culpability of the infringer is not a precondition. The minimum of the recoverable profit is the unpaid license fee. It means that also infringements with a loss can properly be sanctioned.

123. **24) f)** Any other sanctions? Please answer YES or NO.

☒ Yes

☐ No

124. **24) f) (continued)** Please explain if needed.

The making public of the relevant part of the court decision. By imposing this sanction the public (in particular the consumers) can be informed about the infringing practice of the AI service provider.

To order the infringer to make redress, by a statement or in any other appropriate manner, and that such redress, if necessary, be given appropriate publicity by the infringer and at the expense of the infringer.

125. **In which other situations should outputs be qualified as Copyright infringement?**

25) Please explain, in the following cases, if and under what conditions outputs generated by an AI System should be qualified as infringement of a Copyrighted work, e.g. because the output contains characteristic elements of the Copyrighted work, or is in the same style as the Copyrighted Work, etc.:

25) a) In case the use of the Copyrighted work to train the AI System is covered by an Exception. Please answer YES or NO.

☐ Yes

☒ No

126. **25) a) (continued)** Please explain if needed.

In case the use of the Copyrighted work to train the AI System is covered by an Exception or falls within the domain public: NO.

127. **25) b)** In case the Copyrighted work has NOT been used to train the AI System. Please answer YES or NO.

☐ Yes

☒ No

128. **25) b) (continued)** Please explain if needed.

129. **25) c)** In case the Use of the Copyright Data to Train AI System has been authorized, is the content generated (output) always licit, even if some for instance outputs contain characteristic elements of the Copyrighted work? Please answer YES or NO.

☐ Yes

☒ No

130. **25) c) (continued)** Please explain if needed.

No, if the license covered alteration in the most general sense.

131. **26)** Who should be liable in case of Copyright infringement by the outputs?

26) a) The Provider of an AI System? Please answer YES or NO.

☒ Yes

☐ No

132. **26) a) (continued)** Please explain if needed.

As we answered Q 21, we envisage a future fair remuneration system that covers all cases, where the AI system used Copyrighted Data, but such data cannot be identified. Such a remuneration paid by the Provider of AI could cover the training, the production of output and the commercial usage by the final user. In cases, where the Copyrighted Data can be identified, ordinary copyright liability is the also burden of the Provider of the AI system.

133. **26) b)** The user who exploits commercially the AI System? Please answer YES or NO.

☒ Yes

☐ No

134. **26) b) (continued)** Please explain if needed.

Yes, with a limited liability (provision of data), as a contributor: as a person who was using the infringing services on a commercial scale; or was named by the AI service provider as participating in the provision of the services. This view is subject to the GTC of the AI service provider. In cases, where the proposed remuneration system would apply the user would not be held liable.

135. **26) c)** The final user? Even if acting in good faith or unaware of the infringement? Please answer YES or NO.

☒ Yes

☐ No

136. **26) c) (continued)** Please explain if needed.

Yes, with a limited liability (provision of data), as a contributor: as a person who was using the infringing services on a commercial scale; or was named by the AI service provider as participating in the provision of the services. This view is subject to the GTC of the AI service provide. In cases, where the proposed remuneration system would apply the final user would not be held liable.

(This person may be held liable for direct copyright infringement if his/her achievement based on the model produced by the AI service provider qualifies as a copyrighted work, which is used, and this person omits to seek authorization.)

137. **26) d)** Any other person? Please answer YES or NO.

☐ Yes

☒ No

138. **26) d) (continued)** Please explain if needed.

139. **27)** Please comment on any additional issues concerning any aspect of the Use of Copyrighted Data to Train AI System you consider relevant to this Study Question.

N/a.

140. **28)** Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

N/a.