



Brussels, 27 January 2025

Dear Executive Vice-President Virkkunen,

We represent a diverse yet unified coalition of creators and right holders active across the EU's cultural and creative industries. We are writing to express our serious concerns about the Second Draft of the General-purpose AI Code of Practice under the EU AI Act.

Despite our constructive engagement in the AI Office's consultation process on the First Draft, the Second Draft fails to fairly reflect the substantive comments by the creative sectors and acknowledged by the Co-Chairs. When it comes to the fundamentally important issues of transparency and respect for copyright, the Second Draft moves further away from meeting the objectives of the Act.

The EU proved its global leadership in passing legislation that supports the development of responsible AI, while ensuring that European creative industries can continue to grow. The current direction of travel of the Code of Practice, together with the AI Office's suggested template for the sufficiently detailed summary of content used in general-purpose AI training, risks undermining this delicate balance and undermines two critical achievements of the AI Act: supporting the development of AI in Europe and the EU's innovative and dynamic creative sectors.

If the draft is not substantially improved, the Code will fail to meet the objectives of the AI Act and directly conflict with EU law, including copyright law. Such an outcome would be unacceptable, and we cannot support a process that undermines the very principles it was designed to uphold.

The Code of Practice should define the copyright policies which providers of general-purpose AI should implement to demonstrate compliance with EU copyright law, but instead, the Second Draft introduces elements that undercut EU copyright rules. For instance, rather than

establishing that providers must have lawful access to copyright content they use for training, as the EU DSM Directive requires, the draft suggests that AI providers may merely need to make “*reasonable and proportionate efforts*” to ensure they have lawful access.

Further, the Second Draft suggests that when general-purpose AI providers use third-party datasets to train their models, providers merely need to make “*reasonable and proportionate efforts*” to obtain assurances from the dataset providers. As a result, providers could be wrongly exonerated from copyright liability on the back of flimsy warranties by dataset compilers, who in turn could be based in jurisdictions where enforcement of EU rules would be difficult or impossible.

These subjective elements were not discussed during the legislative process and are not part of the political agreement. They are contrary to the EU copyright law, go against the objectives of the AI Act, and will cause ambiguity and undermine legal certainty, by enabling providers of general-purpose AI to avoid meaningful compliance with the EU law.

The Second Draft also dilutes other obligations under the AI Act and EU copyright law, including but not limited to the measures relating to compliance with rights reservations. The draft gives preference to the blocking of crawlers by right holders, which has to be done per crawler using robots.txt protocols over and above content-based rights reservations made by right holders, when neither the DSM Copyright Directive nor the AI Act limit the technologies by which right holders can express their reservations and their effect. Not only does the legislation not proscribe or limit reservations to robots.txt but critically robots.txt has functional shortcomings, which seriously limit its usability as a rights reservation tool, and does not work for all right holders. Therefore, to avoid misunderstandings, the next draft should not refer to robots.txt specifically, and if it is referred to, the draft must be clear that robots.txt is only one possible tool to express rights reservations. Overwhelming feedback underlining this, acknowledged by the Co-Chairs, was nonetheless ignored in the formulation of the Second Draft.

Moreover, the Second Draft proposes privileges for small and medium-sized companies and downstream providers/deployers modifying a pre-existing AI model. While we understand the need to support SMEs and smaller players, it is essential that these entities are held to the same fundamental legal standards as other operators, to ensure fairness and accountability across the sector. SMEs do not enjoy derogations from copyright law, and it is misleading for the Code to imply otherwise. As is, the draft creates loopholes that undermine fairness across the AI value chain by facilitating the introduction of AI models built on illegal content. The size of a company could matter when assessing how the obligations under the AI Act are fulfilled but it cannot be the criterion to exclude such companies from the obligations in the AI Act altogether, including the obligation to implement copyright policies.

The effective implementation of the AI Act, including through the Code, will ensure a functioning, inclusive and healthy licensing market in Europe – the most effective solution towards compliance. Innovation and creativity should grow hand-in-hand by guaranteeing European creators’ and right holders’ remuneration for the use of their works through licences based on EU’s copyright laws, while also protecting their investment for the future of cultural and creative industries, one of Europe’s most globally competitive sectors.

These points must be addressed in the next draft of the Code of Practice, to align the Code with the objectives and wording of the AI Act, EU copyright law, and the principles set out in the Code itself.

In addition, the measures and commitments under the Code of Practice should be complemented with a template for the “*sufficiently detailed summary*” about content providers of general-purpose AI used to train their models. The AI Act requires that the summary must enable right holders to effectively exercise or enforce their rights. The draft template for the summary, presented by the AI Office so far, fails to meet that objective since it will not provide sufficient information for right holders to assess whether their content has been used for training. It must be further improved to meet that objective.

We remain committed to engaging constructively in the drafting process, but a Code cannot set an implementation standard which undermines the objectives of the AI Act, disregards the interests of right holders, creates legal uncertainty, and contravenes EU law. We urge the AI Office to prioritize these necessary improvements in the next draft to ensure robust, inclusive, and legally sound framework.

List of signatories

CEPI - The European Audiovisual Production Association, is the voice of independent production in Europe since 1990. Today CEPI represents 19 national film and audiovisual Production associations from 17 European countries, as well as other organisations such as the Pan-European Association of Animation. CEPI role is to represent the interests of independent producers and foster a strong, independent film and television production sector.

CEPIC - The Center of the Picture Industry, federates 600 picture agencies and photo libraries in 20 countries across Europe, both within and outside the European Union. CEPIC's membership includes large and smaller stock photo libraries, major photo news agencies, art galleries and museums, video companies.

EMMA - The European Magazine Media Association, is the unique and complete representation of Europe’s magazine media, which is today enjoyed by millions of consumers on various platforms, encompassing both paper and digital formats. EMMA represents 15,000 publishing houses, publishing 50,000 magazine titles across Europe in print and digital.

ENPA - The European Newspaper Publishers’ Association is the largest representative body of newspaper publishers across Europe. ENPA advocates for 16 national associations across 13 European countries and is a principal interlocutor to the EU institutions and a key driver of media policy debates in the European Union.

EPC - The European Publishers Council is a high-level group of Chairmen and CEOs of Europe’s leading media groups representing companies which are active in news media, television, radio, digital marketplaces, journals, eLearning, databases and books. We have been communicating with Europe’s legislators since 1991 on issues that affect the health and viability of journalistically driven media and publishing companies in the European Union which uphold the freedom of expression, media diversity, and democratic debate.

EUROKINEMA Association of Film and Television Producers, aims to defend and promote the fundamental role of the film industry and film-makers in a politically and economically integrated Europe.

FEP - The Federation of European Publishers, represents 31 national books and learned journals publishers’ associations of the European Union and the European Economic Area.

FIAPF - The International Federation of Film Producers' Associations' membership comprises 36 national associations representing producers of films and audiovisual programmes, including 15 national associations from the EU/EEA. Members' constituencies are involved in the development, production, marketing and in some cases distribution, of all types of films and/or other types of audiovisual productions, ranging from feature-length films, short film, documentaries, television drama and other audiovisual content, across the European Union across all distribution channels.

GESAC – Founded in 1990, the European Grouping of Societies of Authors and Composers represents 32 of the main copyright management societies (authors 'societies) in the European Union, Iceland, Norway and Switzerland, administering the rights and remuneration of more than 1.2 million authors, composers and writers in a variety of sectors (music, audiovisual, literary and visual and graphic arts) and music publishers. www.authorsocieties.eu

ICMP is the global trade association for the music publishing industry. ICMP represents approximately 90% of the world's commercially released music. Its membership comprises 76 different national associations, across 6 continents, as well as the Major and independent music publishing companies.

IFPI - The International Federation of the Phonographic Industry, is the voice of the recording industry worldwide. IFPI and its National Group network represents the interests of some 8,000 members across the globe.

IMPALA is the European association of independent music companies, representing over 6,000 music SMEs. Its mission is to grow the independent music sector sustainably, return more value to artists, promote diversity and entrepreneurship, improve political access, inspire change and increase access to finance.

IMPF (Independent Music Publishers International Forum) is the global trade and advocacy body for independent music publishers, helping to stimulate a more favourable business environment in different territories and jurisdictions for artistic, cultural, and commercial diversity for songwriters, composers, and music publishers everywhere.

IVF - The members of the International Video Federation are associations representing businesses active in all segments of the film and audiovisual sector in Europe. The IVF's membership is thus involved across development, production, marketing, and distribution of all types of films and audiovisual works, ranging from feature-length films, short films, documentaries, television drama and other audiovisual content, as well as the publication of such content on digital media (DVD, Blu-ray, etc.) and through all online channels ranging from transactional (TVOD/EST), subscription (SVOD) and advertisement-based (AVOD and FAST) distribution models.

NME is the voice of the progressive news media industry in Europe, representing over 2700 news brands, online and in print, on radio and TV.

STM is the leading global trade association for academic and professional publishers. Our mission is to advance trusted research for the benefit of society. The membership is composed of over 140 organisations who are based globally and include academic and professional publishers, learned societies, university presses, start-ups and established players; STM members collectively publish over 70% of all journal articles.