CONTENT GENERATED BY ARTIFICIAL INTELLIGENCE AND ITS COMMUNICATION TO THE PUBLIC – CLAIMS OF PRE-EXISTING RIGHTS HOLDERS

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Abstract: *This article examines whether and to what extent the use of outputs generated by generative artificial intelligence (AI) infringes upon the rights of authors, performers, and producers of recordings. It builds on the premise that general AI models are trained using datasets that include indirect reproductions of protected subject matter. The paper questions the applicability of copyright exceptions, such as text and data mining (TDM) and temporal reproduction, for the training and use of these models. It differentiates between the liability of AI providers and users, arguing that public communication of AI-generated content may involve the unauthorized use of preexisting protected subject matter. Further, the article addresses issues of adaptation, inspiration, and potential infringement through plagiarism or imitation. It concludes by proposing legislative changes.*

Keywords: *Generative AI, copyright, neighboring rights, reproduction, communication to the public, communication to the public of synthetic content, collective licensing*

INTRODUCTION

By adopting the AI Act,[1] the European legislature has imposed obligations on developers and providers of general-purpose AI models to comply with transparency requirements and European copyright law.[2] The aim of this article is to examine the legal nature of the conduct of *users* of such tools who have had synthetic content generated by AI and now use it (communicate it to the public) as a substitute for human-created content, and what claims the original (pre-existing) authors, performers, or producers may have against such users.

General-purpose AI models, as defined in Article 3(63) of the AI Act, have been trained on vast datasets[3] that include, among other things, subject matter protected by intellectual property rights, specifically copyright and neighboring rights (i.e., the rights of performers and the rights of producers of phonograms and audiovisual recordings). In practice, licensing agreements are already being concluded between major rights holders and

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[1] REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

[2] See Article 53(1)(c) of the AI Act.

[3] A dataset is a structured collection of data organized and stored together for analysis or processing. The data within a dataset is typically related in some way and taken from a single source or intended for a single project. In: *What is a Dataset?* [online]. 2023 [2025-10-21]. Available at: <https://www.databricks.com/glossary/what-is-dataset>.

the *trainers* of general-purpose AI models,[4] which can be interpreted as self-confirmation that the input phase constitutes a use of works that requires licensing. Even though the precise parameters of these agreements are not publicly known, this fact supports the notion that the use of data for training purposes is a form of use that must be licensed. On the other hand, it is also possible that these are not license agreements, but rather some form of severance payment.

The AI Act addresses the question of which specific protected subject matter has been used for training in its transparency provisions according to Article 53(1)(d). The term *input* has become established for the initial training phase, and the term *output* is used for the stage where a general-purpose AI system[5] generates synthetic content in response to a user prompt. This article focuses primarily on the output phase and the subsequent events or circumstances.

Other scholars have recently[6] made their primary focus the interaction between the AI Act and European copyright law[7] and the input phase,[8] where the key question is whether and to what extent this phase is covered by the text and data mining (TDM)[9] exception introduced in Article 4(3) of the DSM Directive[10] and the issue of opting out from this exception.[11]

The aim of this article is to build on the work of Rosati[12] and Guadamuz[13] and examine the *life after* of the AI-generated (synthetic) content, particularly the cases where a user of a general-purpose AI system uses a prompt to generate content that is then used as a substitute for human creations (Holcová refers to judgement of Czech Supreme court that claims that there can be a "work" (opus) in the general (and legal) sense of a result of an "intangible activity", which is not qualified (and hence not protected) by the copyright act as a work of authorship)[14], in particular communicated to the public – for example, in their broadcast or on their business premises accessible to the public.

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[4] FRIEDMAN, Jane. *Like It or Not, Publishers Are Licensing Books for AI Training—And Using AI Themselves.* In: *Jane Friedman* [online]. 2024 [2025-10-21]. Available at: <https://janefriedman.com/like-it-or-not-publishers-are-licensing-material-for-ai-training-and-using-ai-themselves/>.

[5] The concept of a general AI system is defined in the AI Act at Article 3(66) and recital 100.

[6] For an overview of works from the first half of this year see for example QUINTAIS, João Pedro. *A mid-year review of AI and copyright posts.* In: *Kluwer Copyright Blog* [online]. 2025 [2025-10-21]. Available at: <https://copyrightblog.kluweriplaw.com/2025/06/24/a-mid-year-review-of-ai-and-copyright-posts>.

[7] For example, QUINTAIS, João Pedro. *Generative AI, Copyright and the AI Act (V.2).* Rochester, NY: Social Science Research Network. In: *SSRN* [online]. 2024 [2025-10-21]. Available at: <https://papers.ssrn.com/abstract=4912701>.

[8] For example, MATULIONYTE, Rita. *Reconceptualising the Reproduction Right in the Age of AI.* Rochester, NY: Social Science Research Network, 2024.

[9] DORNIS, Tim W. *The Training of Generative AI Is Not Text and Data Mining.* Rochester, NY: Social Science Research Network, 2024.

[10] Directive (EU) 2019/790 of the European Parliament and of the Council on copyright and neighboring rights in the digital single market.

[11] SENFTLEBEN, Martin. *The TDM Opt-Out in the EU – Five Problems, One Solution.* In: *Kluwer Copyright Blog* [online]. 2025 [2025-10-21]. Available at: <https://copyrightblog.kluweriplaw.com/2025/04/22/the-tdm-opt-out-in-the-eu-five-problems-one-solution/>.

[12] ROSATI, Eleonora. Infringing AI: Liability for AI-Generated Outputs under International, EU, and UK Copyright Law. *European Journal of Risk Regulation.* 2024.

[13] GUADAMUZ, Andrés. *A Scanner Darkly: Copyright Liability and Exceptions in Artificial Intelligence Inputs and Outputs.* Rochester, NY: Social Science Research Network, 2023.

[14] HOLCOVÁ, I. a kol. *Autorský zákon a předpisy související (včetně mezinárodních smluv a evropských předpisů).* Komentář. Praha: Wolters Kluwer ČR, 2019, p. 62.

As will be explained in the relevant sections of this article, its conclusions are based on doctrinal positions which assert that general-purpose AI models are built upon (indirect) reproductions of protected subject matter that remain an integral part of those AI models, even where users do not expressly request a replica or plagiarism of a specific work, performance, or recording, nor does the generated content necessarily consist of a mosaic made from fragments of pre-existing protected subject matter.

This article also proceeds from the premise that only a human is capable of original creative activity, and that the generative activity of artificial intelligence – even when it may resemble creativity – is always a mechanical and statistical operation on data, which is inherently based on pre-existing materials used for training the AI. In other words, a computer is not, and will not be, capable of true creative authorship (which by itself does not infringe rights in pre-existing works). Therefore, content generation, no matter how sophisticated or automated, always constitutes interaction with or manipulation of countless indirect reproductions of human-created content.

I. INPUT PHASE: CLAIMS AGAINST THE GENERAL-PURPOSE AI MODELS AND SYSTEMS PROVIDERS

The subject of this section is the question of the liability of the provider(s) of general-purpose AI models and systems as such; its aim is to determine whether these persons, by operating and making available their products, use pre-existing protected objects, specifically whether they handle copies of pre-existing protected objects and communicate them to the public, thereby infringing upon the rights of authors, performers, and producers of sound or audio-visual recordings. The following section will then discuss the liability of the user of a general-purpose AI system if they use this tool to generate content to communicate it to the public as a substitute for copyrighted goods.

I.1 Reproductions and Communication to the Public

Before the input phase even begins, it is necessary to create datasets. These datasets may themselves contain or refer[15] to reproductions of individually protected subject matter. A dataset may be protected by copyright as a database[16] or at least by the *sui generis* right of the database maker.

The training of general-purpose AI models is based on data organized into datasets. Therefore, already in the preparatory phase, a question arises: should the activity of creating datasets be considered a use within the meaning of copyright law – whether by reproduction, extraction, or another unnamed method of use? If it is a use, then the providers of these products and their clients (creators of general-purpose AI models) must ensure that the activity is carried out lawfully, either under a contract or statutory license.

Whether reproduction occurs during training is largely a technical, not legal, question. Dornis argues that reproductions actually are created during the input phase. During train-

[15] See e.g., judgment *Kneschke v. LAION* (Landgericht Hamburg, Az. 310 O 227/23).

[16] GUADAMUZ, Andrés. *A Scanner Darkly: Copyright Liability and Exceptions in Artificial Intelligence Inputs and Outputs*, p. 10.

ing, pre-existing data is transformed into vectors – abstract numerical representations of training data – which allow the general-purpose AI system to generate outputs without directly accessing the original data. Dornis contends that these vectors are indirect reproductions of original content (including works, performances, or recordings) or part thereof,[17] fulfilling the definition of reproduction under Article 2 of the Infosoc Directive.[18] Although one can also encounter opposite conclusions, this article works with Dornis's arguments; that general-purpose AI models contain indirect copies of the protected subject matter.

Telec and Tůma also discuss the taxonomy of reproductions and also argue that any expression of a work in the external world constitutes a reproduction,[19] regardless of its form or the fact that a human may not perceive the form directly (e.g., including in a form of a vector).[20]

Whenever a human enters a prompt and the general-purpose AI system generates an output – no matter whether being requested to imitate a known work or not – it likely first accesses related vectors. For example, to generate an image of a cat, the system must *know* what a cat looks like and will thus reference vectors containing information about cats. These vectors, in some cases, may be reproductions of copyright-protected works. The terms *know* or even *remembered* are to be used only for clarity. In general, these psychological manifestations or phenomena are unique to humans and, in the opinion of the author of the article, it cannot be assumed that a machine is capable of them – machine processing, machine learning, or making those data available always takes the form of reproduction within the meaning of the Article 2 of the InfoSoc Directive.

Similarly, even when generating content based on copyright-non-protected styles,[21] for example generating a picture *in the style of Picasso*, the general-purpose AI model must have previously accessed and processed Picasso's work to be able to imitate it. Thus, indirect reproduction occurs regardless of whether the generated content explicitly replicates pre-existing works or not.

Based on Dornis's analysis, input-phase reproductions exist,[22] and providers of general-purpose AI models and systems[23] are responsible for them (Zibner concurs).[24] Even if the generated output is not a mosaic of past works (Guadamuz),[25] the process involves extraction and transformation, which constitutes a use of reproductions.

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[17] DORNIS, Tim W. *Generative AI, reproductions inside the model, and the making available to the public*. Rochester, NY: Social Science Research Network, 2024, p. 5.

[18] Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society.

[19] TELEC, Ivo, TŮMA, Pavel. *Autorský zákon: komentář.* Praha: C.H. Beck, 2019, p. 178.

[20] DORNIS, Tim W. *Generative AI, reproductions inside the model, and the making available to the public*, p. 14.

[21] On the issue of copyright protection of style see further below.

[22] Dornis further concludes that if a general AI system (together with the general AI model on which it is built) is made available online to the public (and thus results in the making available of reproductions inside the AI model), this also constitutes communication to the public of pre-existing protected subject matter on which the general AI model was trained (DORNIS, Tim W. *Generative AI, reproductions inside the model, and the making available to the public*, p. 22).

[23] DORNIS, Tim W. *Generative AI, reproductions inside the model, and the making available to the public*, p. 5.

[24] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu.* Prague: Wolters Kluwer ČR, 2022, p. 86.

[25] GUADAMUZ, Andrés. *A Scanner Darkly: Copyright Liability and Exceptions in Artificial Intelligence Inputs and Outputs*, p. 8.

The CJEU's *Infopaq* ruling[26] is also relevant: the court held that even technical processes or textual snippets may constitute reproduction under copyright law. The AI training process is similarly technical and should be evaluated under the same standard. In the *Infopaq* case, this process specifically consisted of six steps, which included 1. manual recording (entry) of texts (newspaper clippings) in the form of a database, 2. scanning of texts, 3. conversion of texts into electronic form, 4. technical OCR conversion of image data into text data, 5. analysis of texts and creation of short excerpts, which were finally 6. printed on paper.[27] The CJEU stated here that the technical process itself (handling with only an excerpt of text of 11 words in electronic form) may lead to an interference with the right to make a reproduction of a work (if the specific excerpt of 11 words meets the qualities of a work of authorship or a part thereof).[28] Since training artificial intelligence is also a technical process carried out by a computer program and the conclusions of the *Infopaq* judgment find that it involves (or may involve) the making of copies of protected objects or their extracts could therefore also be applicable to this case.

I.2 Applicability of Exceptions to AI Training

This section deals with the question of whether reproductions made during AI training need to be licensed or fall under copyright exceptions, namely temporary reproductions and the TDM (Text and Data Mining) exception.

The conditions for applying the exception for temporary reproductions[29] require that such reproductions be temporary, transient, incidental, economically insignificant, and an integral and essential part of a technological process that leads to a lawful use of pre-existing protected subject matter.[30] These conditions, however, are not met in the context of reproductions created during the training of general-purpose AI models – primarily because these reproductions have clear economic value (the development and provision of general-purpose AI models is undoubtedly an economically motivated activity) and although they are a necessary part of the technological process, this process does not lead to the legitimate use of these objects of protection.[31] It should also be noted that it is not certain whether economic significance can be inferred in the case of a copy of one specific object of protection, when the content of the training data is millions of items and the economic significance of one specific item (one specific object of protection) of this data will always naturally be close to zero[32] – however, the above conditions for an ephemeral copy are to be met cumulatively, and therefore this circumstance is secondary, since regardless of its assessment, the other conditions will not be met on the part of the *trainers*.

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[26] CJEU Judgment in case C-5/08 – *Infopaq International*.
[27] Paras. 17–24 of the *Infopaq I* judgment.
[28] Paragraph 51 of the *Infopaq I* judgment.
[29] See Article 5(1) Infosoc Directive or Section 38a of the Czech Copyright Act.
[30] The CJEU in *Infopaq I* (paragraph 55) held that these conditions must be satisfied cumulatively.
[31] In *Infopaq* I (para. 66), the CJEU used the decisive factor for determining that the exception for temporary reproductions did not apply: whether 'the technical process is automated so that (…) the file is deleted from electronic memory without human intervention and within a limited period.'
[32] GUADAMUZ, Andrés. *A Scanner Darkly: Copyright Liability and Exceptions in Artificial Intelligence Inputs and Outputs*, p. 12.

This section also analyzes the applicability of the text and data mining[33] (TDM) exception, which includes the right of rights holders to opt out.[34] The relevance of the TDM exception is considered not only for the training phase but also for the generation of synthetic content. In evaluating its applicability, one must consider the values at stake: while the training of general-purpose AI models might contribute to technological progress for the benefit of society, the generation and use of synthetic content introduces a conflict between the interests of human authors, performers, and publishers on the one hand and individual users who, instead of their creation, want to communicate to the public synthetic content intending to imitate and substitute the human creation, without advancing the human creativity any further.

The TDM exception allows for the making of (temporary) reproductions and their extraction for automated analysis to gather information, including patterns, trends, and correlations. However, it remains uncertain–and must ultimately be resolved through case law – whether this purpose applies to general-purpose AI model training, especially since the resulting AI models (and the vectors within them) are not temporary but persistent. Moreover, it is unclear whether the purpose of training is to extract information in the sense defined.

According to Rosati, the TDM exception cannot be applied to the activities of users who employ the general-purpose AI to generate synthetic content.[35] The current TDM exception covers only the extraction of information (patterns, trends, correlations), not the generation of content.

Rosati also argues that if training a general-purpose AI model did not involve making reproductions, the TDM exception would be meaningless. Thus, the exception itself supports the view that TDM involves making reproductions, even though it is covered by an exception.[36]

From this point one can argue that that under EU law, TDM constitutes a use – specifically, the making of reproductions – even though it may be permitted under an exception.[37] In Czech law, the adoption of the TDM exception did not itself introduce a new type of use, since the list of uses under Section 12 of the Czech Copyright Act is illustrative.[38] Thus, there is no need to wait for the legislature to positively define/introduce a new use. The TDM exception therefore represents solely the introduction of an extra-contractual right of use[39] and not the introduction of a use itself as a special type of use.

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[33] See Article 4 of the DSM Directive, which applies to text and data mining not intended for scientific research (which is covered by Article 3 of that Directive). The training of general AI models for commercial use cannot be classified as scientific research, although datasets created for scientific purposes may have been used (cf. *Kneschke vs. LAION* judgment).

[34] Further on this see DUSOLLIER, Severine et al. *Copyright and Generative AI: Opinion of the European Copyright Society*, 2025. In: *SSRN* [online]. [2025-10-21]. Available at: <https://ssrn.com/abstract=5166831> and SENFTLEBEN, Martin. *The TDM Opt-Out in the EU – Five Problems, One Solution.*

[35] DUSOLLIER, Severine et al. *Copyright and Generative AI: Opinion of the European Copyright Society.*

[36] ROSATI, Eleonora. *Infringing AI*, p. 8.

[37] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 87.

[38] Act No. 121/2000 Sb., on Copyright and Rights Related to Copyright and on Amendments to Certain Acts, as amended.

[39] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 84.

Some authors, however, conclude that the normative introduction of the TDM exception, which consequently codifies artificial intelligence training as a use, will ultimately most likely hinder innovation and that the European legislator should rather be interested in defining artificial intelligence training as an activity that is not a use, as this would incentivize innovation and Europe's competitiveness in the field of artificial intelligence.[40]

Despite the conclusions presented, however, it cannot be completely ruled out at this time that in the future it will become clear that the TDM exemption includes the training general-purpose AI models.

When examining whether the creation of general-purpose AI systems to generate synthetic content can be covered by the TDM exception, it appears that the exception likely fails the three-step test.[41] This is because the generated content competes with human-created content, which is not aligned with the interests of rights holders.[42]

Whether and to what extent the generated content itself constitutes a reproduction of pre-existing protected works remains a key question. If it does, the user of such content would need to obtain a license – just as if they were using the original protected works directly. The next section addresses this issue in greater detail.

II. COPYRIGHT RELEVANT REGIME OF AI-GENERATED CONTENT: ADAPTATION OR REPRODUCTION? CLAIMS FROM COMMUNICATING TO THE PUBLIC OF AI-GENERATED CONTENT AGAINST USERS OF GENERAL-PURPOSE AI SYSTEMS

II.1 Legal regime of AI generated content

The preceding discussion of reproductions pertains to the creators or providers of general-purpose AI models and systems themselves. Based on doctrinal conclusions, it was argued that these entities, through the creation, operation, and availability of their products, engage with reproductions of pre-existing protected subject matter and communicate them to the public. Thus, their distribution of such products in the EU may infringe upon the rights of authors, performers, and producers, regardless of where they are settled.[43] Let us now turn our attention to the question of whether there is interference with rights to pre-existing protected objects if users of general-purpose AI systems use these tools to generate content that they will communicate to the public as a substitute for copyright-protected human-made content.[44]

To determine whether the use of AI-generated content constitutes a use of pre-existing protected works, it is first necessary to assess the nature of the generated output. Under Czech copyright law, the status of author and performer is conferred only upon natural

[40] MARGONI, Thomas, KRETSCHMER, Martin. A Deeper Look into the EU Text and Data Mining Exceptions: Harmonisation, Data Ownership, and the Future of Technology. *GRUR International*. 2022, Vol. 71, No. 8.
[41] DUSOLLIER, Severine et al. *Copyright and Generative AI*, p. 6.
[42] Further in ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 75.
[43] Based on Article 2(1)(a) of the AI Act.
[44] If such generated content is used by a person for their own personal use, it does not constitute an act in the legal sense, in accordance with Section 30 of the Copyright Act.

persons, as the law aims to protect human creativity and its manifestations.[45] Technical tools, including AI, are meant to assist human creativity, not to replace it.[46] In this light, one must argue that copyright protection applies solely to human-created content that cannot be replaced by operations of a machine.

In contrast, the producer of an audio or audiovisual recordings may be a legal person, and their recordings are protected by law even though they capture content that is not protected by copyright or neighboring rights.[47]

In its judgment No. 10 C 13/2023,[48] the Prague Municipal Court confirmed that Section 5 of the Copyright Act by stating that 'Artificial intelligence cannot be considered an author under Section 5, which reserves authorship to natural persons, and AI clearly does not qualify as such.'[49] The prompt used in that case ('create a visual depiction of two parties signing a business contract') was considered 'merely a concept or idea, which are not protected by copyright.'[50]

Thus, AI-generated content must be considered part of the *public domain*,[51] as defined by for example Koukal.[52] Performer rights do not apply, though rights of producers may exist.[53] However, identifying the holder of such rights[54] raises further questions not addressed in this article, which focuses on claims arising from the use of pre-existing protected subject matter, not the legal status of the generated content. According to Zibner, if AI-generated content were to be considered a form of creative authorship, AI would have to "transcend" its training parameters.[55] This would require redefining the concept of an author to include non-human entities such as software, which Zibner describes as "highly questionable."[56]

Nevertheless, copyright protection can apply to AI-assisted outputs where the human user contributes significantly – e.g., through detailed and deliberate prompts that shape the output to meet the criteria of a copyrightable work, as established by the CJEU. This includes originality, personal expression, and creative choices. Similarly, as in the case of copyright-protected photographs[57] that are also created by a large input of a machine.[58] Zibner outlines four scenarios ranging from authorship by the AI provider to authorship by the user, including co-authorship.[59]

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[45] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 31.
[46] Ibid., p. 34.
[47] Cf. Sections 5, 67, 75, and 79 of the Copyright Act.
[48] In: *msp.gov.cz* [online]. [2025-10-21]. Available at: <https://www.justice.cz/documents/14569/1865919/10C_13_2023_10/108cad3e-d9e8-454f-bfac-d58e1253c83a>.
[49] Paragraph 11 of the cited judgment.
[50] Paragraph 12 of the cited judgment.
[51] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 101.
[52] KOUKAL, Pavel. *Autorské právo, public domain a lidská práva*. Brno: Masarykova univerzita, 2019, p. 23.
[53] Cf. Article 3(b) of the Rome Convention, which defines a sound recording as exclusively the aural fixation of a performance or other sounds perceivable by hearing.
[54] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 102.
[55] Ibid., p. 65.
[56] Ibid., p. 98.
[57] See CJEU judgment in case C-145/10, para. 88 et seq.
[58] See HUGENHOLTZ, P., QUINTAIS, J. Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output? *IIC – International Review of Intellectual Property and Competition Law.* 2021, Vol. 52.
[59] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 115.

An alternative would be to introduce new legal protections, such as a *sui generis* right for AI-generated content (as adopted in Ukraine)[60] or the UK model of "computer-generated works", which attributes authorship through a legal fiction to the person who made the arrangements necessary for creation.[61] Those alternatives will not be addressed any further.

II.2 (Creative) Adaptation and Inspiration and Theme of a Work, or Rather a Reproduction of Pre-Existing Works?

Whether the output is protected by copyright or not, it remains the case that general-purpose AI systems generate content through and thanks to previous interaction with pre-existing protected subject matter used during training – regardless of whether such training constitutes a use of protected subject matter in the copyright sense or not.

This section considers whether and how concepts such as adaptation and inspiration apply to the generation of such outputs, focusing specifically on the rights of authors of pre-existing works. These considerations do not apply to the rights of performers or producers, as the Czech legal system does not extend the concept of adaptation to neighboring rights.[62]

Koukal notes that no author creates in a vacuum. Every single author creates their art upon the works of predecessors and contemporaries,[63] and also from the so-called public domain elements of existing works.[64] Under Section 2(6) of the Czech Copyright Act, those non-protected elements include themes, daily news, facts, ideas, procedures, principles, discoveries, scientific theories, mathematical formulas, and similar content, including styles and artistic methods.[65]

All works build upon prior creativity. Depending on the extent, intensity, and nature of influence, this results either in inspiration – drawing from public domain elements – or adaptation, which uses the individual elements of a previous work and falls under Section 2(4) of the Act. The creation of a derivative work does not affect the rights of the original author.

The creation of a derivative work (adaptations) implicates both the pre-existing author's moral right to the integrity of their work (Section 11(3)) and the economic right to exploit the work in its original, adapted, or otherwise modified form (Section 12(1)).[66] Holcová, on the other hand, presents more precise distinction explaining that even though the author's right to transform a work has a very strong personality basis, it is

[60] KYRYLENKO, Anastasiia. Ukrainian IP Office registers works incorporating AI-generated content protected under new sui generis right. In: *ipkitten.blogspot.com* [online]. [2025-10-21]. Available at: <https://ipkitten.blogspot.com/2024/09/ukrainian-ip-office-registers-works.html>.

[61] ZIBNER, Jan. *Umělá inteligence jako technologická výzva autorskému právu*, p. 88.

[62] Also see §§ 74, 78, and 86 of the Copyright Act, which do not refer to §§ 2(4) and 12(1) of the Act, which regulate adaptations.

[63] KOUKAL, Pavel. *Autorské právo, public domain a lidská práva*, p. 90 or KNAP, K. *Quo vadis současného autorského práva*. In: Aktuální otázky práva autorského, práv průmyslových, práva soutěžního, 1986.

[64] A free element of an authorial work is not protected by law and may be regarded as the counterpart to the protected, individual part, see Ibid., p. 59.

[65] Ibid., p. 59.

[66] TAIMR, Martin. *Inspirace a tvůrčí návaznost z hlediska autorského práva*. Praha: ALAI Česká republika, 2023, p. 33.

a property right by its nature. The personality basis cannot be confused with the nature of the right and cannot be subordinated to personality rights. At the same time, however, it is necessary to bear in mind the possible overlap with the moral right to the integrity of the work which can be infringed even in cases where the process of transforming does not result in the creation of a new work of authorship, but only in the non-creative adaptations and changes of the work.[67] While a work can factually be adapted without the original author's consent, legally this still constitutes an infringement.[68]

Adaptation in sense of copyright law is inherently a human creative activity. Machines can, at best, assist in this process. Therefore, a machine alone cannot create a derivative work and always produces content that is an indirect reproduction of pre-existing works.[69] Whether or not the result has the quality of a work, it still represents a reproduction of the pre-existing works, even though the generated content cannot be considered as a mosaic of pre-existing works (see above).

In either case – whether adaptation or indirect reproduction – the rights of the original author are infringed under Section 11(3) and Section 12(1) of Copyright Act[70] and the user of a general-purpose AI system who communicates the generated content to the public is required to obtain the appropriate license.

One has also to keep in mind that the Section 12(1) of Copyright Act states that the property right of the author belongs to the author regarding the work to use it in its initial form, adapted by another person or otherwise modified, as prescribed by the Article 2(3) of the Berne Convention.[71] This term "otherwise modified" could apply even to the AI-generated content, being somewhere between identical reproduction and adaptation or indirect reproduction. It supports the conclusion that the use of AI-generated content is to be qualified as a use of pre-existing works, even though it remains unclear whether such modification of a pre-existing work constitutes an act of reproduction under EU law.

This analysis supports the conclusion that generative AI content is both an unauthorized derivate of pre-existing works and also an unauthorized reproduction of those. The following section addresses whether similar reasoning can be extended to performances and recordings.

II. 3 Reproduction or Adaptation of Performances and Recordings

The previous section discussed the adaptation or transformation of pre-existing works into new copyright works or into content not protected by copyright. However, since the right of adaptation is not harmonized at the European level, it remains unclear whether adapting a pre-existing work into a new one constitutes an act of reproduction under EU law.[72]

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[67] HOLCOVÁ, I. a kol. *Autorský zákon a předpisy související (včetně mezinárodních smluva evropských předpisů).* Komentář. Praha: Wolters Kluwer ČR, 2019, p. 142.

[68] TELEC, Ivo and TŮMA, Pavel. *Autorský zákon*, p. 53.

[69] Ibid., p. 178.

[70] TAIMR, Martin. *Inspirace a tvůrčí návaznost z hlediska autorského práva*, p. 33.

[71] Berne Convention uses this wording: Translations, adaptations, arrangements of music and other alterations of (…) work.

[72] For international comparisons of approaches to this topic see further TAIMR, Martin. *Inspirace a tvůrčí návaznost z hlediska autorského práva*, p. 54.

Under Czech law, the author holds the right to adapt their work and to exploit such adapted work. Performers and producers do not possess an equivalent right for their performances or recordings. This section therefore examines whether content generated by a general-purpose AI system interferes with any of the rights of performers and producers under European and Czech law.

Regarding the interaction between modification (creative or non-creative) of performance and moral rights of performers (that are not at all granted to the producers), this approach would probably not help here. The Czech law states that performer has right to protection against any disfigurement, deformation or any other alteration of his performance, which may affect his reputation[73]. Even though one can claim that the AI-generated content distorts the pre-existing performances, it probably does not have capacity to harm reputation of a performer so the infringement of the moral right of performer probably cannot happen in case of AI-generated content. It could only happen if the AI-system was instrued by a user to generate content that deforms one particular performance (or few of them) which is closer to the Quotation, Parody, Caricature, and Pastiche, as is examined below.

Similar to the definition of author's property right, right of performer to use their performance includes the use of the original version of the performance or a version adapted or otherwise altered under the Czech law.[74] While this "altered version" is not part of the right of producer to their fixation at all. This concept does not come from the international treaties, while the European law works with both original fixations and their reproductions,[75] whereas the reproductions include direct and indirect ones, as introduced above. Because of this fact, this question of "use of altered performance" shall not be examined any longer.

One potential approach that rests with the legislature is to expand the institute of adaptation to performers and producers equally. This step would grant the adaptation/transformation right to both performers and producers– evaluated as both creative and non-creative processing – which would allow performers and producers the right to authorize modification of their performance or fixation. To follow the existing principle of authors', it would need to introduce new both moral and property rights for producers and also a new/wider moral right of performers, too. It is not advisable solution due to its potential major impact on the system of the (Czech) copyright law, while the same goal can be reached in different way with similar impact, as will be analyzed below.

Alternatively, one could analyze whether the AI-generated content constitutes a reproduction of pre-existing performances or recordings, regardless of whether the generated content qualifies as a protected work. This approach does not require legislative change, since the right of reproduction applies equally to authors, performers, and producers.[76]

If the AI-generated content does not qualify as an original, independent work, then it should be regarded as a reproduction of a pre-existing work. Telec and Tůma argue[77] that

[73] Section 70 (4) of Copyright Act.
[74] Section 71 (1) of Copyright Act.
[75] See for example Article 8 of the Rental and Lending Directive.
[76] Cf. Article 2 of the Infosoc Directive.
[77] TELEC, Ivo and TŮMA, Pavel. *Autorský zákon*, p. 178.

reproducing a recording that captures a work entails reproduction of this work.[78] This implies that reproductions of recordings of works (expressed in the form of particular recorded performance) always constitute the reproduction of such particular performance and recording, too.

This is further supported by the CJEU's ruling in *Pelham I* (also known as *Kraftwerk I*),[79] which addressed the issue of *sampling* audio recordings. Although the case concerned a factually different situation,[80] the Court of Justice drew conclusions regarding neighboring rights that may also be applicable to AI-generated content.[81] The Court interprets the non-harmonized right of adaptation (in this case, of a sound recording) through the lens of the harmonized right of reproduction.[82] It concludes that incorporating a "very short sample" from a pre-existing sound recording into new one constitutes an interference with the reproduction rights of the producer of the original recording.[83] However, this conclusion is restricted by the condition that the producer of the original recording may object to such use only if the sample is incorporated in an unaltered form and is recognizable to the ear.[84]

According to Senftleben's analysis, any processing involving even a short reproduction of a sound recording falls within the reproduction right as defined in Article 2(c) of the InfoSoc Directive.[85] This implies that the concept of adaptation extends to sound recordings and that such adaptation constitutes a reproduction of the original recordings.

However, the CJEU further held[86] that if the sample used is unrecognizable in the new recording, the rights holder cannot prevent the use in form of distribution of those new recordings as governed by the Article 9 RL Directive.[87] The CJEU also stated that the statutory license to citation in the meaning of Article 5(3)(d) of the InfoSoc Directive cannot impact the situations when the work (recorded in the pre-existing recording) and then sampled cannot be recognized in the new work.[88] The same logic could apply to AI-generated content: if the output contains no recognizable fragments, the original rights holders may not be able to prevent its use on reproduction grounds alone.

Yet, the Court also recognized in paragraph 47 of the *Pelham I* decision that distributing pirated copies of recordings may harm the market for legitimate copies and thus infringe producers' rights. While this was not considered the case for sampling, it might

[78] Ibid.
[79] CJEU judgment in case C476/17 – *Pelham* and others.
[80] For further developments see ATILLA, Söğüt. *ECS's Opinion on Pelham II and its potential implications for AIgenerated pastiches*. In: *ipkitten.blogspot.com* [online]. 2025 [2025-10-21]. Available at: <https://ipkitten.blogspot.com/2024/12/ecss-opinion-on-pelham-ii-and-its.html>.
[81] ROSATI, Eleonora. *Infringing AI*, p. 16.
[82] SENFTLEBEN, Martin. *Flexibility Grave – Partial Reproduction Focus and Closed System Fetishism in CJEU, Pelham*.
[83] Paragraph 29 of *Pelham I* judgment.
[84] Paragraph 87(1) of *Pelham I* judgment.
[85] SENFTLEBEN, Martin. *Flexibility Grave – Partial Reproduction Focus and Closed System Fetishism in CJEU, Pelham*, p. 9.
[86] Paragraph 87(2) of *Pelham I* judgment.
[87] Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Rental and Lending Directive).
[88] Paragraph 87(4) of *Pelham I* judgment.

be relevant for AI-generated content that replaces human-made works and undermines the demand for original recordings and performances.[89]

Based on the above, it can be inferred that a communication to the public of synthetic content is unlikely to fall under any of the copyright exceptions and from this perspective, such activity therefore requires, in all cases, the authorization of the rightsholders of the pre-existing protected subject matter on which the AI was trained.

II.4 Plagiarism, Forgeries, and Imitations

According to Telec and Tůma, if the result of creative transformation does not meet the criteria of a derivative work, it may still qualify as a plagiarism.[90] Plagiarism involves using parts of another's work – whether protected or not–without proper attribution.[91] It can also take the form of imitation or forgery, both of which may infringe the author's rights under Sections 11(3) and 12(1) of the Czech Copyright Act. Creating a reproduction or imitation of a work (or of a performance or recording) is only permitted for private use by a natural person. In the case of imitating visual art, the imitation must be clearly marked as such.[92] If a user instructs a general-purpose AI system via prompt to generate content that imitates pre-existing protected subject matter – such as music resembling a real band's work – and then communicates that content to the public, they are likely infringing on the rights[93] of the original creators,[94] regardless of who originally generated the imitation or who is responsible for such imitation.

On the other hand, Guadamuz refers to studies showing that general-purpose AI systems generate reproductions of pre-existing works "on their own" only in rare cases.[95] By "on their own," he refers to generic prompts such as 'generate a picture of a cat,' which do not target any specific protected content. In contrast, reproductions are more likely when the general-purpose AI system is directly or indirectly prompted to create a specific imitation.[96]

Such so-called *deepfakes* and the obligation to clearly label them as AI-generated content are also addressed in Article 50(1) of the AI Act.

II.5 Quotation, Parody, Caricature, and Pastiche

These exceptions to copyright also apply to neighboring rights of performers and producers. Their general purpose is, according to Prchal, to allow follow-up artistic creation, education (illustrative use), scientific or scholarly work, or research. Prchal therefore refers to them as exceptions promoting creative use and continuity.[97]

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[89] If there is an interference with the rights in a recording as such, there must necessarily also be an interference with the rights in the performance recorded therein.
[90] TELEC, Ivo, TŮMA, Pavel. *Autorský zákon*, p. 51.
[91] SRSTKA, Jiří et al. *Autorské právo a práva související: vysokoškolská učebnice*. Prague: Leges, 2017, p. 79.
[92] See Section 30 in connection with Sections 74, 78, and 86 of the Copyright Act.
[93] ROSATI, Eleonora. *Infringing AI*, p. 21.
[94] We leave aside at this point the question of interference with general personal rights of individuals, which is also likely to be affected.
[95] GUADAMUZ, Andrés. *A Scanner Darkly: Copyright Liability and Exceptions in Artificial Intelligence Inputs and Outputs*, p. 20.
[96] DORNIS, Tim W. *Generative AI, reproductions inside the model, and the making available to the public*, p. 9.
[97] PRCHAL, Petr. *Limity autorskoprávní ochrany*, p. 184.

The quotation exception applies only when the original work is properly cited and the new material enters into a dialogue with it. According to Taimr, the newly created content does not need to qualify as a protected work.[98] However, AI-generated content typically does not include source attribution and does not clearly engage in a dialogue with the pre-existing work.[99] Moreover, such a dialogue cannot feasibly occur with the millions of works present in training datasets.

As for the concepts of parody and caricature, their essence lies in being artistic or scholarly reworkings of the original with the aim of producing a humorous, ironic, satirical, or similar effect through new expression.[100] Given this definition, these exceptions cannot apply to content generated from vast training datasets by general-purpose AI systems.[101]

The scope and meaning of the pastiche exception has not been clearly defined by European or Czech legislatures, and must await judicial interpretation.[102] However, based on its systematic placement alongside parody and caricature, it can be expected to function similarly. Therefore, it may be anticipated that the pastiche exception would likewise not be applicable in the context of AI-generated content, as it is also impossible to ensure that such generated content reflects the millions of protected subject matter on which the general-purpose AI model was trained.[103]

II. 6 Incidental Use

Incidental use is another statutory license, governed by Section 38c of the Czech Copyright Act, which implements Article 5(3)(i) of the InfoSoc Directive. According to Myška,[104] as well as Telec and Tůma,[105] it refers to situations where a work, performance, or recording is used in a way that is accidental, interchangeable, and negligible, as part of the primary use of another *main* work or element. Czech law uses the phrase 'main use of another work or element,' while the Directive refers to 'incidental inclusion in another material.'

Czech legal literature does not explore in depth whether this *other element* or *other material* must necessarily be a protected work. However, it is plausible that a general-purpose AI model trained on a large dataset of protected subject matter could qualify as such an *element* or *material*.

This argument is reinforced by the fact that many similar and interchangeable items (e.g., cat images) may have been used during training. As a result, the general-purpose AI system can now generate outputs, while one particular picture of a cat is of very limited relevance for a newly generated picture of a cat. In that sense, any specific pre-existing

[98] TAIMR, Martin. *Inspirace a tvůrčí návaznost z hlediska autorského práva*, p. 77.
[99] ROSATI, Eleonora. *Infringing AI*, p. 22.
[100] TAIMR, Martin. *Inspirace a tvůrčí návaznost z hlediska autorského práva*, p. 79.
[101] ROSATI, Eleonora. *Infringing AI*, p. 23.
[102] At the time of submission of this article, a new opinion of the Advocate-General in case held at CJEU C590/23 within the Pelham saga, so called *Pelham II*, was issued shortly before closing. Due to the timing of the deadline, there was no opportunity in the article to address this opinion in detail.
[103] Further see TAIMR, Martin. *Inspirace a tvůrčí návaznost z hlediska autorského práva*, p. 82.
[104] POLČÁK, Radim, KOUKAL, Pavel, LEŠKA, Rudolf et al. *Autorský zákon: praktický komentář s judikaturou*. Praha: Leges, 2020, p. 374.
[105] TELEC, Ivo, TŮMA, Pavel. *Autorský zákon*, p. 460.

item (e.g., one specific cat image) could be considered interchangeable with others and therefore this limitation of copyright might be applicable under circumstances of generating content by AI.

Myška also briefly references the German doctrine's discussion on whether this exception applies to services like street view,[106] which suggests some room for interpreting the incidental use exception in the context of AI. Nevertheless, given the limited scope of this article, this limitation shall not be examined any further.

III. THE ISSUE OF THE MULTIPLICITY OF PROTECTED SUBJECT MATTER USED IN TRAINING

Most of the legal instruments discussed in this article (originating from a time before the rise and widespread adoption of generative AI) are based on the interaction between a single pre-existing protected work and a single newly created work. It is therefore legitimate to question whether these exceptions to copyright law are still applicable when the input side involves millions of copyrighted works, performances, and recordings, and the output is similarly massive and distributed globally.

The current legal framework anticipates that adaptations or reproductions involve the rights of one or a small number of authors. In the case of generative AI, however, millions of works from training datasets may be implicated. Individual licensing in such scenarios would be practically unfeasible due to overwhelming transaction costs.

If the conclusions presented in this article hold, then the use of AI-generated content should be treated the same way as the use (e.g., communication to the public) of the original protected works without transformation, it means that a license would be necessary. In that case, the problem of multiplicity on the output side could be resolved through mandatory or extended collective rights management.

For the input phase, voluntary collective rights management may be considered through existing collecting societies. However, for the sake of efficiency and legal certainty for general-purpose AI model providers, legislative action introducing extended collective licensing would be advisable (right to equitable remuneration does not seem suitable as it would – as kind of mandatory collective management – conflict with the existing opt-out from the TDM exception). Such mechanisms would simplify proof requirements and, through a legal fiction, extend the repertoire of collective rights managers to cover all works without limitations of time or volume.

If it were ever demonstrated that a general-purpose AI model was trained solely on content outside the scope of copyright protection, Senftleben refers to Dietz's concept of a 'remunerated public domain' (*public domain payant* chargeable service), introduced in 1990. This concept proposes the creation of a new rights-holder category – 'community of authors' – as the originators of public domain works, performances, and recordings. The idea is that even users of unprotected content benefit from past human creativity and should therefore provide compensation.

[106] POLČÁK, Radim, KOUKAL, Pavel, LEŠKA, Rudolf et al. *Autorský zákon*, p. 376.

According to Senftleben,[107] such compensation – paid as equitable remuneration for the training and use of AI, especially when its output competes with human creativity – would facilitate enforcement and reduce the burden of proof for rights holders. They would not need to rely solely on the AI Act's transparency rules or prove specific infringements by individual models or systems.

IV. SUMMARY

This article presents arguments that the creation and offering of general-purpose AI models and systems by their developers and providers may constitute an infringement of the rights to reproduce and communicate to the public pre-existing protected subject matter belonging to authors, performers, and producers. It also questions whether such activities fall under the existing exceptions for temporary technical copies or TDM reproductions.

It further concludes that the generation of content and its subsequent public use may be interpreted as an infringement of the author's right to use their work in an adapted or otherwise altered form, including as an indirect reproduction. Regarding performers and producers, it concludes that the generation of content results in the reproduction of their protected subject matter.

Exceptions for quotation, caricature, parody, and pastiche are analyzed and found inapplicable to the generation and use of AI content. A marginal incidental use exception may provide some room for application in this context.

Consequently, anyone who communicates AI-generated content to the public is in fact communicating pre-existing works, performances, or recordings to the public. This means that such public use – e.g., broadcasting or public performance – constitutes the use of pre-existing protected subject matter and must be properly licensed.

Two legislative changes are also proposed: one to extend the right of adaptation (including non-creative adaptations) to performers and producers, and the other to introduce a right to equitable remuneration or extended collective licensing for the input phase of AI training.

CONCLUSION

The *Pelham I* decision by the CJEU confirms that the adaptation of pre-existing recordings and works (and likely also performances) constitutes an infringement of rights, including the reproduction right. However, the harm is not enforceable if the original protected content is unrecognizable in the new material.

Nonetheless, the Court also emphasized that newly created content must not compete with the original and must not endanger the interests of rights holders. This view is supported by the recitals of the InfoSoc Directive (5, 9, and 10), which emphasize the need for high levels of protection to ensure sustainable creativity–i.e., fair remuneration for use and return on investment for rightsholders.

[107] SENFTLEBEN, Martin. Generative AI and Author Remuneration. *IIC – International Review of Intellectual Property and Competition Law.* 2023, Vol. 54, No. 10, p. 19.

When assessing whether the generation and use of synthetic content in contexts where human-created content was previously used poses a risk to the interests protected by copyright and neighboring rights, one must weigh the interests of the parties involved, as foreseen by the three-step test.[108]

Where the interests of rights holders are weighed against the interests of society in the development of general-purpose AI models, the benefits of innovation, economic growth, and efficiency may justify the use and training of general-purpose AI models.

However, where the interests of rights holders are in conflict with the economic interests of technology companies and users who generate and disseminate content as a substitute for human-created works, priority should be given to the continued support of artistic and cultural creation over purely profit-driven motives.

[108] On the question of balancing see KOUKAL, Pavel. *Autorské právo, public domain a lidská práva*, p. 152, who refers the work of Knap KNAP, K. *Subjektivní práva a právem chráněné zájmy v oblasti práv k nehmotným statkům*. In: Aktuální otázky práva autorského, práv průmyslových, práva soutěžního, 1988.