BONO BILLEDKUNST OPPHAVSRETT I NORGE NORWEGIAN VISUAL ARTISTS COPYRIGHT SOCIETY

Oslo, November 2026

BONOs svar på Kommisjonshøring

BONO har sendt inn svar på EU-kommisjonens «consultation in preparation of a targeted initiative to potentially change and improve the EU's copyright framework», som ble sendt ut i oktober i år.

Interessenter ble invitert til å komme med innspill til ulike problemstillinger og mulige løsninger, blant annet knyttet til **opphavsrett og generativ KI**.

Her kan du lese BONOs svar på spørsmålene.

Section 1: Copyright and generative AI: licensing and enforcement of copyright and related rights

Q1. What are in your view the three most pressing issues regarding the use of copyright-protected content in the context of AI that need to be addressed?
(please select up to three options and rank them in order of priority, with 1 being the highest priority)

	Priority
Legal uncertainty on the applicable copyright rules, including with regard to the application of the text-and data mining exception	
Practical challenges in expressing, identifying, and respecting rights reservations, including lack of standardised opt-out technical protocols that can be operationalised at scale	
Differences in the applicable copyright rules that lead to competitive disadvantages an uneven playing field between AI providers in the EU and providers operating in other jurisdictions	
Difficulties in enforcing exclusive rights provided under EU copyright law due to limited transparency on the use of copyright-protected content by AI model or system providers	**2**
Limited licensing and remuneration opportunities for creators and creative industries	**3**
Limited access to quality copyright-protected data for AI training and development, including access to large-scale datasets necessary for building advanced AI	
SMEs' and start-ups' lack of resources and limited bargaining power to conclude licenses	
Use of protected content without authorisation, where no exception or limitation apply	**1**
Other - please explain	

Q2a. As a rightholder, have you faced difficulties in enforcing and/or licensing your rights for AI uses (e.g. for training, or other types of uses)?

- ☐ ***Yes***
- ☐ *Partly*
- ☐ *No*
- ☐ *Not applicable*

Q3a. As a rightholder, what are the main barriers or obstacles you have encountered in enforcing and/or licensing your rights?
(please select maximum 5 options and rank them in order of priority, with 1 being the highest priority)

	Priority
Legal uncertainty on the applicable copyright rules, including with regard to the application of the text-and data mining exception	
Fragmentation linked to national rules or jurisprudence across the EU	
Difficulty in obtaining detailed information about the use of copyright protected content as evidence to support licensing negotiations or infringement claims, including in courts	3
Limited bargaining position in licensing negotiations	2
Counterparties are unwilling to engage in licensing	1
Difficulties in establishing or agreeing on the economic value of works or other subject matter for AI uses	
Unclear responsibility regarding the clearance of rights across the AI value chain (dataset vendor vs. model/system provider vs. deployer)	
Difficulties to express reservation of rights (opt-out) under the TDM exception	4
Difficulty to verify the respect of the reservation of rights (opt-out) under the TDM exception	5
Insufficient transparency on the activities on web crawlers with regard to copyright-protected content	
Litigation or dispute-resolution costs	
Transaction costs related to licensing	
Other	

Q4a. As a rightholder, how do you assess the impacts of the barriers identified under question 3a? *(select all that apply)*

- ☐ **Loss of revenues or licensing opportunities**
- ☐ **Market substitution and erosion of primary markets for copyright-protected content**
- ☐ **Reduced incentive to create, produce, or invest within the EU**
- ☐ **Reduced competitiveness of affected businesses or sectors**
- ☐ Negative impact on the quality/performance of AI models or systems (e.g. lack of access to high-quality diverse or specific content, leading to low quality, output and worse model performance)
- ☐ No significant effects
- ☐ Other : please specify

Please explain your answer to question 4 (impact of barriers) (1000 characters max)

Difficulties in engaging in licensing agreements for AI uses leeds to a great loss of potential revenue for authors, which they are due, as they contribute substantially to AI development by creating the works on which the models are trained. Furthermore, the substitution of human created works in the market reduces the potential revenues. One of the key goals of copyright

is creating incentives for human creators to continue to create. This is important for European cultural sovereignty. When copyright is undermined, the incentive to create is reduced. The lack of legal instruments to ensure that copyright is respected by AI providers leads to a destruction of incentives for creators which in turn could lead to an erosion of European culture.

Q5. In your view, what would be the most appropriate approach at EU level to tackle the challenges linked to the use of copyright-protected content for generative AI?

- ☐ Maintain the status quo: continue enforcing the existing rules, with no changes to the regulatory framework
- ☐ Enhance voluntary cooperation among market players, through soft law instruments (at national or EU level)
- ☐ Introduce non-legislative measures to support access and use of copyright-protected content for AI
- ☐ **Introduce new binding measures under EU copyright law**
- ☐ Other: please specify

Q6. In your view, which mechanism(s) would be the most appropriate to support <u>enforcement of copyright and related rights</u> related to AI uses? *(please rank the options in order of appropriateness, with 1 being the most appropriate and 10 the least appropriate)*

	Appropriateness
Operationalising the existing opt-out mechanism under the TDM exception via a common vocabulary, EU standards for opt out protocols, and an EU-level registry for opt-out	
Clarify the application of EU copyright rules (including territorial application) for use of copyright-protected content for AI training and other AI uses	**1**
Imposing an obligation on web crawlers and AI agents used to crawl content online to disclose identity and purpose	**7**
Introducing an obligation on AI providers / dataset providers / data collectors of record-keeping and retention of information about use of copyright-protected content (e.g. clearance/licensing, verification of opt out, etc.) for a defined period	**3**
Imposing an obligation on AI providers / dataset providers / data collectors of independent audit /certification on use of protected content	**6**
Imposing an obligation on AI providers to provide information under NDA about use of protected content upon a substantiated request from CMOs/rightholders and under certain conditions, as an alternative to the public disclosure of the top 10% of the top domain names of the websites crawled as required in the Commission template for the public summary of training content under the AI Act	**4**
Providing for the possibility for courts / administrative authorities to impose disclosure obligations under certain conditions in the context of legal proceedings or mediation/arbitration	**5**

Introducing a rebuttable presumption of use of copyright-protected content by AI providers, subject to specific conditions, e.g. where AI providers do not fulfill the existing transparency obligations provided for in the AI Act	**2**
No need for additional mechanisms	
Other : please specify	

Please explain your answer and share your views on the mechanisms listed above, including on possible considerations and conditions of application: (1500 characters max)

It should be clarified that any copyright relevant act involved in the training, development and use of AI models are subject to applicable EU copyright rules when the model is available in the EU, even where their training takes place outside the EU.

Furthermore, the rightsholders need access to information about copyright-relevant uses in order to enforce their rights, and in turn provide licenses and collect remuneration. The measures promoting the transparency on the use of works will have a positive impact on the enforcement of copyright.

Q7. In your view, how would these different options impact your business/activity? *(Note that you may choose not to answer any option on which you have no opinion by leaving the relevant boxes unticked.)*

	Impact
Operationalising the existing opt-out mechanism under the TDM exception via a common vocabulary, EU standards for opt-out protocols, and EU-level registry for opt-out	**Moderate positive impact**
Clarify the application of EU copyright rules (including territorial application) for use of copyright-protected content for AI training and other AI uses	**Strong positive impact**
Imposing an obligation on web crawlers and AI agents used to crawl content online to disclose identity and purpose	**Strong positive impact**
Obligation on AI providers/dataset providers/ data collectors of record keeping and retention of information about use of copyright-protected content (e.g. clearance/licensing, verification of opt-out, etc.) for a defined period	**Strong positive impact**
Imposing an obligation on AI providers / dataset providers / data collectors of independent audit/certification on use of protected content	**Strong positive impact**
Imposing an obligation on AI providers to provide information under NDA about use of protected content upon a substantiated request from CMOs/rightholders and under certain conditions, as an alternative to the public disclosure of the top 10% of the top domain names of the websites crawled as required in the Commission template for the public summary of training content under the AI Act	**Strong positive impact**

Providing for the possibility for courts / administrative authorities to impose disclosure obligations under certain conditions in the context of legal proceedings or mediation/arbitration	**Moderate positive impact**
Introducing a rebuttable presumption of use of copyright-protected content by AI providers, subject to specific conditions, e.g. where AI providers do not fulfill the existing transparency obligations provided for in the AI Act	**Strong positive impact**
Use this row to indicate the impact of the mechanism you described under "other" in question 6 above	**Strong positive impact**

Please explain your answers to the question above (1000 characters max)

The suggested measures would have a positive impact providing that the legal clarifications means that EU-copyright protection applies for training happening outside the EEA, and that the transparency-obligations give rightsholders sufficient insight into the use of copyrighted works for AI-training and uses, in order to facilitate for licensing.

Q8. In your view, which mechanisms would be the most appropriate to facilitate licensing and access to and use of copyright-protected content in the different phases of the AI lifecycle? *(fill out a maximum of 3 rows)*

In order to take into account the different types of uses of copyright-protected content, the table below makes a distinction between

- *(i) uses related to the training of generative AI models (where rightholders have opted out from the TDM exception),*
- *(ii) uses taking place at inference time (use of content by an AI system after training, including for the purpose of responding to user inputs, retrieving copyright-protected content, providing context, grounding outputs, augmenting generation, or otherwise supporting the operation of the system during deployment), and*
- *(iii) other uses related to AI-generated output (such as production, creation, adaptation, or summarisation of content by an AI system based on content or prompts)*

	Type of use
Supporting the development of a marketplace for licensing copyright protected content for AI uses, for example through technical solutions for automated licensing at scale	
Develop model contractual clauses for licenses covering AI uses	
Imposing an obligation on rightholders and AI providers to conduct negotiations in good faith	
Introducing a structured mediation or arbitration mechanism involving an independent body which could, under certain conditions, require the	

parties to share information, negotiate and assist in the determination of the remuneration	
Promoting collective licensing, in particular through the use of extended collective licensing (ECL), if and where appropriate	**Training, inference-time, output**
Introducing a fair compensation obligation for the uses falling under the exception in Article 4 DSM which have not been reserved by the rightholders	**Training**
Introducing a remuneration right for certain uses of copyright protected content by generative AI models/systems providers or other relevant actors	**Training, inference-time, output**
No need for additional measures	
Other - please explain	

Please explain your answer and share your views on the mechanisms listed above, including on the conditions of application: (1500 characters max)

BONO: Extended collective licensing has been widely used in the Nordic countries for several years. It simplifies the process of licensing at scale, secures remuneration for the artists, while also providing legal certainty for the users. Therefore, promoting ECL for AI-uses would be very beneficial, both for the rightsholders, and for AI providers.

A right to fair remuneration could supplement an ECL, and be a beneficial measure, as it enhances the bargaining power of the rightsholders, which are trying to negotiate with some of the most powerful companies in the world.

A fair compensation obligation for the uses falling under the exception in Article 4 DSM which have not been reserved by the rightsholders would ensure that they are not deprived of remuneration where their works contribute to the development of AI systems.

Q9. In your view, how would these different options impact your business/activity? *(you may choose not to answer any option on which you have no opinion by leaving the relevant boxes unticked.)*

	Impact
Supporting the development of a marketplace for licensing copyright protected content for AI uses, for example through technical solutions for automated licensing at scale	**Strong negative impact**
Develop model contractual clauses for licenses covering AI uses	**Moderate negative impact**
Imposing an obligation on rightholders and AI providers to conduct negotiations in good faith	**Moderate positive impact**
Introducing a structured mediation or arbitration mechanism involving an independent body which could, under certain conditions, require the	**Strong positive impact**

parties to share information, negotiate and assist in the determination of the remuneration	
Promoting collective licensing, in particular through the use of extended collective licensing (ECL), if and where appropriate	**Strong positive impact**
Introducing a fair compensation obligation for the uses falling under the exception in Article 4 DSM which have not been reserved by the rightholders	**Strong positive impact**
Introducing a remuneration right for certain uses of copyright protected content by generative AI models/systems providers or other relevant actors	**Strong positive impact**
Use this row to indicate the impact of the mechanism you described under "other" in question 8 above	