



THE EXPERT GROUP ON
COPYRIGHT
AND ARTIFICIAL
INTELLIGENCE

Recommendations
from the Expert Group
on Copyright and
Artificial Intelligence

CHAPTER 4. THE EXPERT GROUP'S RECOMMENDATIONS

RECOMMENDATION 1: EFFECTIVE TRANSPARENCY IN TRAINING DATA

The Expert Group recommends that effective and meaningful transparency be ensured at EU level regarding the use of copyright-protected material in the training and development of commercial AI systems. Transparency is essential to ensure that right holders are able to monitor the use of their works. As a complementary measure, it is further recommended that a presumption be introduced at EU level to the effect that commercial AI systems shall be deemed to have been trained on copyright-protected material in cases where the transparency requirement is not met.

Effective transparency can be achieved by ensuring that right holders are provided with the following information, enabling them to determine whether their content has been used in the training of AI systems:

- Information on what has been used for training, including the title or another identifier of the work (such as the ISBN in the case of books).
- Source of the content: ideally at URL level; otherwise at domain level or by specifying the name of the service (e.g. Spotify or YouTube).
- Date and time of collection.
- The manner in which the content was collected: an explanation of how the AI provider ensured lawful access to the content at the time of collection.

Alternatively, right holders should be granted the possibility to search their own repertoires directly within the datasets used for training AI systems and be provided with the necessary tools to carry out such searches.

If such datasets or the relevant information about them are not made available to right holders who request access within a reasonable time frame, a rule of reversed burden of proof should apply. Pursuant to this rule, it shall be presumed that a right holder's content has been for training AI systems unless the provider of the relevant AI system can demonstrate otherwise. The Expert Group notes that this proposal may be viewed as a continuation of Recommendation 3.1 in Report 2 of the Government's Expert Group on Big Tech, which specifically recommends imposing additional obligations on technology companies that use copyright-protected material.¹⁰³

This recommendation, concerning effective and meaningful transparency, together with the proposed presumption rule, should be advanced in the relevant EU-level fora.

Danish Chamber of Commerce (*Dansk Erhverv*) and Danish Industry (*Dansk Industri*) consider that such a rule on the reversal of the burden of proof should apply only in cases where providers of AI systems have failed to comply with the transparency obligations laid down in Article 53(1)(d) of the AI Act.

The Danish Media Association (*Danske Medier*), on the other hand, takes the view that, irrespective of any transparency requirement, a reversal of the burden of proof and a presumption rule should apply, whereby it is presumed that copyright-protected content has been used as training data.

RECOMMENDATION 2: EFFECTIVE OPT-OUT MECHANISMS OR NEW RULES FOR TEXT AND DATA MINING

The Expert Group recommends that significant improvements be ensured at EU level regarding the ability of right holders to opt-out of text and data mining. Ultimately, the Group recommends that Article 4 of the CDSM Directive be amended so that the lawful use of works for text and data mining requires the explicit consent of the right holders.

The Expert Group takes the view that the current ability of right holders to control and enforce opt-outs from text and data mining is far from satisfactory, as the existing opt-out system does not function effectively in practice. Therefore, there is a clear need to strengthen this system in order for the rules to operate as intended and to ensure the necessary legal certainty for both right holders and providers of AI systems.

The Expert Group considers that, in view of the rapid pace of technological development in this area, the initial focus should be on solutions that are practically implementable. The Expert Group therefore recommends introducing harmonised EU-wide rules specifying how an opt-out may validly be made and how such opt-outs should subsequently be processed and documented. The rules should ensure that right holders are able to exercise an opt-out of general application without incurring significant financial costs, and that they are able to verify that such opt-outs are complied with. It should also be ensured that effective sanctions are established for failure to comply with valid opt-outs.

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If these initiatives do not resolve the practical challenges faced by right holders under the current opt-out system by the end of 2026, the Expert Group recommends that Article 4 of the CDSM Directive on text and data mining be amended without delay.

Such an amendment should be tabled in the context of the European Commission's planned evaluation of the CDSM Directive in 2026. In that context, Denmark should submit a proposal to amend the rules so that the use of works for text and data mining is subject to the right holders explicit consent ("opt-in").

The Danish Media Association considers that Article 4 should be amended without delay to introduce an opt-in system.

RECOMMENDATION 3: IMPROVING THE FRAMEWORK CONDITIONS FOR COLLECTIVE LICENSING

The Expert Group recommends that measures be initiated, both at national and European level, to improve the framework conditions for collective licensing in relation to the use of copyright and related rights in AI systems.

The Expert Group considers that right holders are entitled to receive fair remuneration when their works or performances are used for the commercial development and training of AI. Current licensing solutions are not sufficiently effective in ensuring that AI providers conclude agreements with the relevant collective management organisations. There is therefore a need for initiatives that reinforce the principle laid down in Section 55 of the Danish Copyright Act (which implements Article 18 of the CDSM Directive), providing that right holders are entitled to fair remuneration when their exclusive rights are exploited and commercialised by others. Among other things, this can be achieved by strengthening the framework for collective management. The Expert Group supports the principle, as set out in the current Section 55, that authors and performing artists are entitled to appropriate and proportionate remuneration and that, under Section 55(d), this right may not be waived to their detriment.

Specifically, the Expert Group recommends that work be pursued at EU level to establish a legal framework enabling collective management organisations to grant licences to providers of AI systems. In this context, consideration should be given to establishing global or multinational licensing schemes to facilitate the conclusion of the necessary agreements by large international actors. Furthermore, mechanisms for recognising national solutions across borders to address unrepresented right holders should be considered.

In Denmark, the possibility of concluding licensing agreements in this area could be strengthened through the introduction of a specific extended collective licensing provision on the use of copyright-protected material in AI systems. Such a provision should also empower the Copyright Licence Tribunal (*Ophavsrettslicensnævnet*) to settle disputes relating to the terms and remuneration of such agreements.

The Expert Group furthermore supports Recommendation 3.2 in Report 2 of the Government's Expert Group on Big Tech, which concerns EU-level licensing arrangements for the use of copyright-protected material.¹⁰⁴

Finally, the Expert Group emphasises that, should Danish language models be developed, it is essential to facilitate the conclusion of agreements on rights clearance. This could, for instance, be achieved by establishing a cooperative forum within Danish cultural and educational institutions, involving representatives of broad-based collective management organisations, data owners and other relevant stakeholders.

RECOMMENDATION 4: PILOT SCHEME FOR FINAL-OFFER ARBITRATION TO RESOLVE COPYRIGHT DISPUTES IN THE PRESS SECTOR

The Expert Group recommends that an examination be undertaken as to whether a final-offer arbitration model could be introduced to ensure the effective resolution of copyright disputes and to promote the conclusion of licensing agreements concerning the use of copyright-protected content, including for the training of AI systems, initially as a pilot scheme in the press sector.

The existing enforcement mechanisms in copyright law do not provide a sufficiently effective means of resolving rights-related disputes. This includes, for example, Section 52 of the Danish Copyright Act, which enables the parties to a dispute to request mediation where negotiations on specific licensing agreements have failed to produce a result. However, a party may simply choose not to participate in the mediation.

The Expert Group considers it problematic that the current rules neither impose an obligation to participate in extended collective licence negotiations or mediation nor provide for sanctions in cases of non-participation. This is particularly relevant in areas where protected content serves an important democratic and informational function, as is the case for press publications.

The Expert Group therefore recommends that consideration be given to addressing these enforcement challenges through the introduction of a final-offer arbitration model. Under this model, the parties to a dispute would be required to take an active part in negotiations and any mediation processes. If these efforts fail to result in an agreement, each party would submit its proposed terms to an independent arbitration body, which would then select the proposal it considers most reasonable. This process encourages both parties to present fair and balanced offers, while ensuring a swift and binding resolution of the dispute.

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Such an arbitration model could be developed drawing inspiration from comparable international frameworks. In assessing the legal and practical feasibility

of introducing the model, particular attention should be given to due process considerations, including the possibilities for judicial review and the speed of dispute resolution.

The Expert Group notes that publishers of press publications in particular have reported significant challenges in concluding agreements concerning the online use and making available of press content by information society services. It should therefore be examined whether such an arbitration model could initially be introduced as a pilot scheme in the press sector, with the possibility of wider implementation should the experience prove positive.

If the examination results in legislative initiatives in this area, the Expert Group considers that the greatest impact would be achieved by adopting such rules at EU level.

The Danish Media Association considers that there is an urgent need for an enforcement model that is effective in practice against technology companies and therefore takes the view that a final-offer arbitration model should be introduced without delay.

RECOMMENDATION 5: PROTECTION AGAINST DIGITAL IMITATIONS OF INDIVIDUALS' PERSONAL CHARACTERISTICS

The Expert Group recommends introducing copyright-based provisions to protect individuals from digital imitations of their voices, appearances and other personal characteristics.

Developments in generative AI have made it increasingly easy to create highly convincing digital imitations of real people. In particular, there have been numerous instances where the likenesses of well-known individuals have been used in songs, videos and advertising campaigns without their consent.

The Expert Group therefore recommends the adoption of new rules protecting personal characteristics, with a view to codifying certain aspects of personality rights which are currently difficult to enforce against large technology companies. The Expert Group considers it essential that action be taken swiftly. Accordingly, such rules should initially be introduced at national level, preferably through amendments to the Danish Copyright Act. Should corresponding rules later be introduced at EU level, the Danish provisions could be adapted as necessary.

In addition, the Expert Group recommends examining the possibility of introducing specific protection against digital imitations of artists' performances. The purpose of such protection would be to ensure that performers hold rights not only in recorded performances but also in the performances themselves, independent of whether the material performed qualifies as a copyright-protected work. This protection is particularly relevant where the underlying material (such as a script or a song) is not protected by copyright, for example because it has been generated by AI.

Finally, the Expert Group observes that the use of AI also enables the rapid and inexpensive production of content that closely resembles existing human-created works. Such content may compete directly with an author's own works, as it can closely imitate that author's distinctive stylistic expression, making it difficult to discern whether a work was created by the original artist or by AI. In such cases, the Expert Group urges the adoption of a stricter similarity assessment to prevent others from intentionally free-riding on the creative efforts of well-known authors, composers, visual artists and other creators who have developed their own unique and recognisable style.

RECOMMENDATION 6: REQUIREMENT FOR TECHNICAL MEASURES TO PREVENT THE UNLAWFUL UPLOADING AND COPYING OF COPY- RIGHT-PROTECTED CONTENT ON AI SERVICES

The Expert Group recommends that providers of commercial AI services be required to implement effective technical safeguards ("guardrails") to prevent users from uploading or inserting copies of copyright-protected material that could give rise to copyright infringements.

Users of AI systems currently have extensive opportunities to upload copyright-protected works and productions and to create copies of such protected content through the use of prompts or instructions. This material may then be used to generate outputs that imitate the style of the uploaded content (potentially reproducing protected elements) and may also be used to train or further develop AI systems without the consent of the right holders.

The Expert Group considers that the principles set out in Section 52(c) of the Danish Copyright Act (corresponding to Article 17 of the CDSM Directive), which governs the liability of online content-sharing services for user uploads, should likewise apply to providers of AI systems. This would mean, *inter alia*, that providers must make their best efforts to ensure that users cannot upload content in violation of copyright, for example by incorporating technical safeguards (guardrails) and that users are prevented from giving instructions to generate outputs "in the style of", "look-alike", "sound-alike" or similar expressions where such use would constitute a copyright infringement.

The specific obligations of AI providers could be established through cooperation between AI service providers and right holders at national level, for example, drawing on the model of the existing "Article 17 Forum" in Denmark. These obligations could include, among other things, the establishment of easily accessible complaint mechanisms.

The recommended requirements and obligations should preferably be introduced at EU level. However, consideration should be given to pursuing national regulation in cases where there is insufficient support for such rules at EU level.

RECOMMENDATION 7: CONDITIONAL PUBLIC PROSECUTION IN TECHNICALLY AND JURISDICTIONALLY COMPLEX COPYRIGHT AND AI CASES

The Expert Group recommends that the provision on conditional public prosecution in the Danish Copyright Act be extended to also cover less serious cases where the infringement relates to AI and involves technical or jurisdictional complexity.

Under the current rules of the Copyright Act, copyright infringements must generally be prosecuted by the injured party. This applies to infringements covered by Section 76(1). However, serious infringements, covered by Section 76(2), are subject to conditional public prosecution, meaning that the Prosecution Service (usually upon request) may initiate an investigation and bring charges in such cases.

The police are often better equipped and more competent to investigate and gather evidence in cases involving online criminal activity. Copyright-related cases linked to AI are typically highly complex, both technically and legally, and often cross national borders. The Expert Group therefore considers that public prosecution should be possible in such specific cases, even where the infringement is not deemed to be of a serious nature.

In practical terms, the recommendation could be given effect through an amendment to Section 82 of the Copyright Act, extending its application to offences covered by Section 76(1).

The recommendation assumes that additional resources will be allocated to Denmark's National Special Crime Unit (*NSK*), as the proposed amendment is expected to increase the police's workload. The Expert Group further emphasises that such additional work should not be undertaken at the expense of other activities related to the enforcement of intellectual property rights. Given the current size of *NSK*'s Section for Rights Protection, it is estimated that the proposal would require two additional full-time positions. Depending on the necessary level of experience and competence expertise and any special operational costs (including IT equipment, system access, licences, etc.), the annual expenditure is estimated at between DKK 2 million and 2.5 million.

RECOMMENDATION 8: STUDY OF POSSIBLE MEASURES TO STRENGTHEN THE USE OF HUMAN-CREATED CONTENT

The Expert Group recommends that a study be undertaken to identify and assess possible measures to support and strengthen human-created content in situations where there is a risk that artificially generated content may displace or outcompete human works. One possible approach could be the introduction of a "*domaine public payant*" scheme. The study should examine the advantages and disadvantages of such a system and draw on international experiences with comparable models.

In several sectors, most notably the music industry, users are expected to make increasing use of free, artificially generated content instead of human-created works and productions. Analyses indicate that a significant share of future growth, particularly within the music sector, will take place in the field of AI-generated content. This has given rise to concerns within the industry that such content could undermine or displace the very works on which the new, unprotected content is based.

The Expert Group considers that the risk of artificially generated content out-competing human-created works should be examined in greater depth. Building on this analysis, the study should propose possible mitigating mechanisms that could be introduced at European level. One of the approaches discussed by the Expert Group is a "*domaine public payant*" system, whereby payment would be required for the commercial use of works in the public domain. In the music sector, for example, such a scheme would entail a levy on all types of music paid into collective systems, ensuring that users do not gain a financial advantage by relying on AI-generated music.

The study should also ensure that any such scheme does not unduly restrict technological innovation, including the development and use of AI and that it does not result in unintended or disproportionate disadvantages for Danish or European competitiveness.

RECOMMENDATION 9: GUIDELINES AND AWARENESS-RAISING INITIATIVES ON COPYRIGHT AND AI

The Expert Group recommends that guidelines be developed for businesses and institutions concerning the use of copyright-protected content on AI services and that educational and awareness initiatives be designed for institutions, students and other users of AI services. Dedicated funding should be allocated to support these activities.

The Expert Group observes that copyright issues are generally underrepresented in the ongoing dialogues and debates about the development of AI. This lack of focus creates uncertainty for both businesses and institutions seeking to use or develop AI, as well as for individual users of AI services. The dissemination of clear information on the legal possibilities and limitations relating to copyright and AI would help enhance legal certainty for Danish businesses and other stakeholders, thereby supporting innovation and technological development in Denmark.

The Expert Group therefore recommends that the Danish authorities prepare such guidelines for businesses and institutions as soon as possible, including on the fundamental principles of copyright in the context of AI. Furthermore, the Danish authorities, in cooperation with private-sector actors, should devel-

op educational programmes, awareness initiatives and campaigns aimed at institutions, students and other users of AI services.

RECOMMENDATION 10: CLARIFICATION IN COPYRIGHT LEGISLATION THAT THE OFFERING OF AI SYSTEMS CONSTITUTES A “MAKING AVAILABLE TO THE PUBLIC”

The majority of the Expert Group recommends that legislation clarify that the offering of AI systems constitutes a “making available to the public” of the content on which those systems have been trained, in order to create optimal conditions for agreements on sharing the value generated through the commercial offering of AI systems on the European market.

The Expert Group considers that all major commercial AI systems are trained on vast amounts of copyright-protected material and that the use of such material as training data constitutes a substantial economic asset for the providers of those systems. The Expert Group finds that such commercial exploitation should not take place without licensing and remuneration for the right holders whose material has been used.

The Expert Group finds that the use of works as training data without consent constitutes an infringement of copyright law in cases where the training is not covered by an exception or limitation. However, it remains legally unclear whether the offering of an AI system on the market constitutes a “making available to the public” of the works on which the system has been trained.

On this basis, a majority of the Expert Group finds that there is a need for a clear legislative provision specifying that the offering of an AI service on the European (or Danish) market constitutes a copyright-relevant act of “making available to the public”, as defined in Section 2 of the Danish Copyright Act (corresponding to Article 3 of the InfoSoc Directive). This clarification would enhance legal certainty by confirming that licensing agreements with right holders are required when a service provider offers EU citizens access to its AI service.

The recommendation would also address the question of jurisdiction in cases involving the unauthorised making available of works, as jurisdiction would automatically lie in the country where the AI system is offered. In this way, the recommendation would strengthen both the contractual and the enforcement framework.

The proposal concerns commercial AI systems and does not take a position on what should apply to non-commercial research institutions. In the view of the Expert Group, non-commercial research institutions warrant particular consideration. This could be achieved through a mandatory exception corresponding to Article 3 of the CDSM Directive.

It should be noted that the proposal would have no implications for AI systems that are not trained on copyright-protected material.

As the recommendation constitutes a clarification of an EU legal concept, it should be implemented at EU level.

Danish Chamber of Commerce (*Dansk Erhverv*) and Danish Industry (*Dansk Industri*) consider that the recommendation would have far-reaching implications for both providers and right holders and therefore recommend that a high-level working group be established at EU level to assess the consequences of the proposal. Finally, the business organisations consider that such a high-level working group should, more generally, advise the European Commission on how the EU copyright framework can best be adapted to technological developments in the field of AI.

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