

Bulletin

ORGANIZATIONS OF FILM AUTHORS IN SERBIA



CONVERSATION
WITH THE AUTHOR

Nikola Lorencin

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cinema – without it, navigating feature
filmmaking is a real challenge

INTERVIEW:

Pauline Durand-Vialle

UFUS | AFA
ORGANIZATION OF FILM AUTHORS IN SERBIA

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Photo: Vojislav Gelevski

EDITORIAL



Stefan Gelineo

Director of UFUS AFA

Editorial

Regional cooperation is the key to a better position and stronger protection of film authors in the Balkans. Film authors in the region share similar challenges, while the position of our film authors, budgets, and the scope of copyright protection remain below European standards. The adoption of new, more modern laws meant to address contemporary challenges, both in the film industry in general and in the field of copyright, is progressing very slowly, with delays ranging from several years to several decades. In the meantime, authors are at a loss, while the industry profits. While most European countries are implementing EU Directives concerning copyright in the digital environment and adopting new laws to protect film authors from AI-related abuses, Serbia and some other countries in the region are still lagging behind this process, leaving film authors without adequate and timely protection.

One of the common problems in the countries of the region is the lack of awareness regarding the importance of copyright. Neither the general public nor the authors themselves are fully aware of the right to fair compensation for the use of film and television works. This leads to a situation in which users – cable operators, broadcasters, and streaming platforms – earn huge sums by exploiting copyrighted works, while their creators remain on the margins and struggle to assert their rights.

That is precisely why collective organizations must unite and act together. UFUS AFA from Serbia, AIPA from Slovenia, DHFA from Croatia, and AZAS from North Macedonia are building a network of cooperation that will enable a stronger influence on lawmakers, a more effective push for alignment with European laws, and better conditions in negotiations with the users of works.

This autumn, we have two important events ahead: a regional meeting in Belgrade at the end of September and a meeting in Skopje in November. The November meeting will place special focus on supporting our colleagues from AZAS, who, although recognized under North Macedonian law, still do not have agreed-upon tariffs with users of works. This means that Macedonian authors, although legally entitled, do not possess the means to start collecting fees or paying royalties to authors. The support and solidarity of organizations from the region are crucial for accelerating this process and enabling film authors in Macedonia to finally assert their rights in practice.

By uniting, we send a clear message – film authors in the Balkans stand together. Only in this way can we ensure that our work is recognized, respected, and adequately rewarded.

INTERVIEW

Photo: FERA



Pauline Durand-Vialle

*Chief Executive of the Federation
of European Screen Directors (FERA)*

We are witnessing a historic theft of content to nourish a technology which is competing with human creation

UFUS AFA recently became a member of Federation of European Screen Directors (FERA), an organization that represents cultural, creative and economic interests of more than 20,000 European film and TV directors. Pauline Durand-Vialle has been Chief Executive of FERA for more than a decade, during a time of great changes and challenges in the audiovisual sector. After great successes in

leading FERA, participation in changing legal norms for the benefit of film authors, Durand-Vialle has been appointed as the new Executive Director of the European Audiovisual Observatory, part of the Council of Europe in Strasbourg.

Before she takes office on September 15, we talk about her work at FERA, the position of directors in the film industry, contemporary challenges, streaming services, artificial intelligence, legal regulations and other topics.

We are very happy and excited to have UFUS AFA as a new associate member. Our chair of the board Bill Anderson recently met with some folks locally and he was really impressed by the energy and determination of our colleagues in your country, but also more widely in the Balkans. There is clearly an energy in terms of fighting for rights, for proper place in this industry which is very inspiring for the rest of Europe. I think it's great that we can solidify our relationship this way.

FERA represents more than 20,000 European screen directors from 35 countries. What are the common problems of directors in Europe?

There are a number of problems that are common for all. Over the last five years we have had an increasing understanding that these problems are beyond Europe, that we now have common problems in the directing community globally. But there are three core things that we see. One is creative control and that's a very significant issue. The ability for a director to make artistic choices (not without outside input, but without undue interference), should be consistent with the fact that they are the only person in the production which is contractually responsible to finalize the work that is to be shown to the audience. We see that this key role of being responsible for the delivery of the final work is no longer respected. Because in the end it is, by contract and reputationally, the director who will carry the final the responsibility for the work and put his or her name on it. We find a degradation of understanding of this responsibility, that creative control is necessary to fulfill this role: that is really problematic and seem to have increased over recent years.

The second point is how widespread very poor and unstable working conditions are, and low income is a part of that. Also, the vast majority of directors across the



Europe are freelancers, with little to no social benefits, no health insurance, no pensions, so they have to work other jobs to make ends meet. It's difficult to build your skills as a director and to build a career because you have to do other things to make a living.

The third one is that it is very difficult to enforce your author's rights, be they moral or economic. I think these are the three aspects that most directors in Europe face and we are always working on within FERA.

You mentioned the Balkans earlier as inspiring, but we are far behind in the scope of copyright protection, but also in terms of the position of film authors in general. Is it realistic to expect that laws within Europe will be harmonized, that authors will have equal rights?

When you look at authors' rights, copyright protection is definitely an area where harmonization to high standards is helpful. However creative control or working conditions, including social benefits, are much more difficult to approach through this angle because of limited EU-level competence on labor law and social conditions: national law framing contracts is what audiovisual authors have to live with. With respect of copyright, the particular status of Serbia as a candidate country can be leveraged to some extent. The fact that Serbia cooperates with the European Union on legal alignment can be leveraged: we know this because it was used in the past by other countries that eventually became member states. However when you're talking about harmonizing copyright or authors' rights there is a limit to what can be achieved, because you have different traditions in terms of copyright protection in different areas of Europe. It's very striking to see the difference between so-called Roman-law countries – France, Italy, Spain, by contrast to Germany, The Netherlands or Austria which will have a very different approach to copyright-related matters. These very strong differences are not going away anytime soon.

In what ways did the FERA influence European legislation in the past? Which campaigns are you most proud of?

It's really the copyright Directive, because I arrived at FERA when the first consultation about potential copyright reform started, so I had been given a chance to be involved from the very start. It was an incredible learning experience the first few years because you just go through the entire process and it's very instructive. In many ways, this way of making common legislation is much more open to dialogue and influence than you would expect. Because sometimes from a local perspective you have this image of a Brussels that decides things, almost in its own logic. But actually, if you take the process early on when the European Union starts consulting on a issue, you can really organize the way you're making your point strategically and carry something forward with the different institutions involved in the European co-legislative process. I know the copyright directive can be a source of frustration for a lot of rightsholders including for collective management societies but from our perspective at FERA if you look at the copyright directive from 2001 you will find half a sentence in the recitals, not even in the articles, talking about authors: "If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work". And from that half a sentence which carries zero legal weight, we've moved to actual articles setting out positive rights that cannot be waived by contracts from authors and performers across the European Union and a very clear and explicit recognition that authors and performers are systematically weak when they negotiate their contracts. So, the concept of contractual freedom used by producers, broadcasters and streamers is no longer the norm.

Now, there is an understanding that the concept of contractual freedom does not apply to authors and performers when they negotiate their individual contracts because when they are in the vast majority of

With respect of copyright, the particular status of Serbia as a candidate country can be leveraged to some extent. The fact that Serbia cooperates with the European Union on legal alignment can be leveraged: we know this because it was used in the past by other countries that eventually became member states

The ability for a director to make artistic choices should be consistent with the fact that they are the only person in the production which is contractually responsible to finalize the work that is to be shown to the audience. We see that this key role is no longer respected

cases systematically the weaker party in the negotiation with little to no ability to negotiate. The new rights that were introduced in EU law, and that are unwaivable, on transparency, contract for negotiation and the reassignment of rights to the authors and to the performers might seem difficult to use at present but the fact that there is a recognition in law, that there is a principle of proportionate remuneration related to the economic success of the work are very good stepping stones for implementation in industry practice through collective mechanisms and why not stronger legal provisions to be developed in the future. In that sense I think we've made massive progress in the campaign, which was not easy, to make sure that across all the creative sectors we are able to make the point that copyright is created by the imagination and the work of authors and performers who are then confronted by industry forces – their position should always be understood and recognized as unique. The implementation of these new rights, both individually and collectively, are not going to be easy, but it's a legal basis that is consistent across the European Union now, which was not the case before. Of course, the world has changed since 2019 and a lot of new things have come up, AI, the exponential rise of streaming... and new developments of the law are needed. But the fact that we have this recognition already enshrined at European level is going to be helpful in the next phase.

You mentioned those topics, imagination, authors' rights, everything else that came in focus with this AI age that we are living in. We are not only fighting against financial giants like the AI companies but also with our own governments. Do you think we can win this battle?

It's a topic that is keeping us incredibly busy. At FERA we are working on this issue of regulating AI and the impact of AI training on the value of copyrighted works that have been used to train these models, as well as the impact of AI on directors' authorship, artistic and creative work. We've been working on it since 2022. Two aspects of this issue are particularly difficult to tackle. The first really difficult situation we have is that we can tell that the negotiations are going to be so difficult between rightsholders and these new players, the tech giants and the new AI providers that we see emerge. We believe legislation can make a difference because rightsholders will not realistically find bargaining power to match these players locally – possibly not even internationally in today's tense geo-political context. Compared to their size, we are small both economically and in terms of critical mass to build bargaining power. So, legislation and courts are the way forward. The problem is that in order to create new legislation which is effective, or even to interpret existing legislation in a way that is fair for the creative community, politicians and policy makers must be willing to fight for protective legislation – and litigation in court takes a lot of time, you need to build a case, you need to have the money to go to court and then you have to be bullish in arguing your case within the judicial system. If European policy makers are telling you to just go to court and figure it out this way, when we are used to regulate before we go to court, it's a sign that they do not want – or are not in a position to intervene.

The question is why is there limited political will to defend something which is so important for our societies in Europe - culture, freedom of expression, freedom of speech, freedom of the press? The importance of innovation in the future of European economy seems to be one reason for it. Rightsholders made their case to policymakers about artistic and creative work being stolen, with solid proof, technical understanding and legal analysis – but so far their response is not proportionate to the historic theft of content feeding a technology competing with human creation. Technology that is looking backwards at stolen work proposing new content that people are expected to want, generating content compared to creating entertaining, challenging, imaginative new artistic and creative works by humans.



It seems like the disruption must be normalized so that European tech players can emerge to take part of this AI global race. If European policy makers or local policy makers think this way, we will not have champions to fix a legal framework which is not working at present.

And the other problem?

Both within the individual sector and across all the cultural and creative sectors, including the press sector or the media sector, the rightsholders community is not unified on the concrete way forward. Collective management organisations or big catalog owners seem to think that a licensing market can work for training AI. They believe that they have the ability to negotiate and if the legal system was to force that, they would strike deals and maybe not make a lot of money, but at least be in the game. The problem is that in the rightsholders community you have creators, authors and performers who are at the origin the value of authors' rights because it's their creation that is at the basis of the economic value that is created comes later – and this community, as far as I can tell, is incredibly divided. You have pragmatics on the one end who are saying “technology is here, it's not going away, we're going to make do with it, try and keep the power of creative decision making, artistic decision making, and use it as a tool”. And then you have the others who are saying “this is fundamentally wrong, cannibalistic, and maybe the end of what creation and imagination is about in the creative sectors. The audiovisual sector is prone to anything that help productivity against originality, and therefore this technology is going to be damaging for our creative control and process”. As long as you have an important part of the community saying “we don't want to authorize the training of the AI with our pre-existing

It's difficult to build your skills as a director and to build a career when you have to do other things to make a living

works”, then speaking in one voice between all the rightsholders will be a challenge. I have talked a lot with our collective management organizations, colleagues and the representatives of big rightsholders in Brussels, telling them to be careful because you need to make sure that the common line is strong if you want to be able to face this difficult political climate. Is anybody making an effort to give meaningful guarantees to authors, performers and creative workers in that regard? As long as that is not dealt with, the rightsholders' community will struggle to speak constructively in one voice beyond the basic condemning of one aspect of the law or one specific aspect of policy developments. Have a message that really carries will not be possible.

What would be a fair solution in your opinion?

In the audiovisual sector it might start with getting the public funding systems and public service broadcasting to assert that AI developments in local industries that they have a structural impact on must be ethical, that human beings must be at the heart of the creative process, and that the artistic vision of creators must be respected for projects to be supported. Collective negotiations could also lead the private sector to commit to ethical standards in the use of AI. For this to happen, you need to mobilise collective forces so that the sector reacts at the scale of the change that is coming – we are not there just yet.

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Photo: UPUS AFA

CONVERSATION WITH THE AUTHOR



Nikola Lorencin

film and TV director, essayist, educator

Documentary film is the origin of cinema – without it, navigating feature filmmaking is a real challenge

Film and TV director, critic, essayist, and educator Nikola Lorencin has dedicated his life to documentary filmmaking: as a recognized and award-winning creator of film and television works, as a film and TV critic and essayist, as a professor at the Faculty of Dramatic Arts in Belgrade and at other film schools, and as the artistic director and chair of the March Festival Council. The esteemed filmmaker, who has spent over half a century immersed in cinema, says that for him, documentary film is not a mere replication of reality, nor is it simply a 'camera-eye', as many would like to portray it.

He began his professional work with 'motion pictures' as an assistant to Aleksandar Saša Petrović on his film projects, whose class he graduated from at the Academy of Theatre, Radio, Film, and TV, while simultaneously working on his own films, which went on to win awards at numerous domestic and international festivals.

Such is also one of his most recent works, the docudrama *Drava se ne predaje* (Drava does not surrender), dedicated to the brave crew of the river monitor of the Royal Yugoslav Navy, which resisted the German invasion in April 1941.

"That film has been both a challenge and a burden for me. Drava was started as a school project back in 2019 or 2020 through 'Zastava film', intended to educate future sailors on a river vessel. Over its 75 years of operation, 'Zastava' produced many such school films, designed to provide soldiers with part of their training through cinema. However, when I read the script, which mostly focused on the monitor itself – its combat capabilities, characteristics, when it was built, its armor thickness, and so on – I realized that what truly held the ship together was Commander Aleksandar Berić, who was married and had a four-year-old son. He had served in the Bay of Kotor, but shortly before the war in 1941, he was transferred to Novi Sad, to the 'Drava' ship. It was a monitor, a special warship of the Royal Navy, and Aleksandar Berić served his command on the Drava with great dedication and honor. I suggested to the screenwriter, who was an officer, that we make a docudrama in which the backbone would be the documentary segments, complemented by a narrative part telling the intimate family story of Commander Berić, his wife, and his son. We navigated the live-action and documentary parts well, but some elements had to be done with animation. That animation gave us a real headache, since it extended the production by another three years. The actual filming – and no one believes me when I say this – took only two weeks."

According to Lorencin, it is an exciting and diverse film – a true cinematic experience, but in cinemas, 'it doesn't stand a chance'.

"I must take this opportunity to address you, as an organization that protects the copyright of authors, and make a request and point out that today, producers hold broad – almost unlimited – rights over a completed film, including the ability to reshape it, shorten it, or cut out entire scenes. I am concerned about today's relationship between directors and producers, and the way some producers assume all rights for themselves – including the authors' rights – not only during the preparation and the shooting of a film, but also by manipulating the finished work."



Using his own experience as an example, Lorencin explains how much a director invests in a film and that they often do far more than what is in their job description.

"I poured all my knowledge into the film Drava – from guiding it to become a narrative feature to finding a person who created the icon of Saint Stolpnik, whom Captain Berić venerated, and which we used in a scene. Not to mention, I got this gout in the ship's lower deck, since we were filming in March when it was extremely cold."

After Drava, Lorencin made two more documentaries: Ljubica i Grgur (Ljubica and Grgur), about the last female political prisoner from the Informbiro period, sentenced to serve time on the island of Grgur (part of the Goli Otok archipelago), and a film about the poet, writer, journalist, and partisan from Naples, Giacomo Scotti.

His body of work includes dozens of films and decades of work. Does he ever stop to think about how he managed to accomplish it all?

"Every time I wake up and think about what I'm going to film that day, I remember that I'm 85 years old – and that back in 1953, as a kid in Pula, where my family lived and I went to school, I passed my very first film exam, that is, a photography course. So, ever since 1953, I've been considered a trained film worker who later earned a degree from the Faculty of Dramatic Arts, where I would go on to both work and teach. Saša Petrović was

my professor at the Faculty of Dramatic Arts, and later I worked alongside him in the department as his assistant. Even before I started filming with him, I had already made several school films – fiction films – that remain very dear to me. Those films were shown at the former Genre Film Festival, GEFF, organized by Kinoklub Zagreb. One year, Dušan Duca Stojanović, the renowned professor, dedicated GEFF to the theme of eroticism and sex, and selected one of my films for screening – a film that was rich in erotic content. I consider 1970 the year I began working professionally and appearing at festivals. The next stage of my career began with the launch of the Second Channel of Television Belgrade, for which we prepared programs and films. The series Neobavezno (Casual) comes from that period. Back then, we worked on film stock, creating films that remain highly significant and of high quality even today. Together with Dragan Babić, I worked on Dvogled (Binoculars), some fifty episodes of a travelog series."

Lorencin says he doesn't have an exact record of how many works he has made over more than half a century of professional activity, but there have been many.

"I tried to list all my works, but gave up halfway. I estimate that my biography includes around 850-900 creations. I've worked on documentaries, feature films, TV series and films, as well as school programs. Some are better, some worse; some longer, the others shorter;

Today, producers hold broad, almost unlimited rights over a completed film – from reshaping and shortening it to cutting out scenes



Serijal Neobavezno,
photo: arhiva RTS



During the filming of Majstor i Margarita, Saša Petrović, photo: Private archive



some black-and-white, some in color – there's a little bit of everything. I can confidently say that at least a hundred of those works are good, if not excellent. I don't know many creators who can boast of such a body of work. But for me, it has always been a pleasure; I've never seen my work as an obligation. On the contrary! About 90 percent of the works were based on my own scripts, concepts, and ideas."

For over half a century, he has remained devoted to documentary film.

"I believe that documentary film is the origin of cinema, and that an author who does not go through that experience and 'drink from that source' will have real challenges managing feature films. Documentary film helps us approach life, feel it a little, and try to find some kind of way out. Because life does not offer merely hardships, trouble, and ordeal, but also pleasure, delights, and success, though one must fight for those. The documentary films I made most often came about 'alongside me', from this time, from this very moment, though I also worked on some docudrama TV films and series that dealt with the past. I filmed many television dramas, movies, and series, such as *Priče preko pune linije* (Stories across the solid line). The TV film *Mala privreda* (Small business) was based on Duško Trifunović's script, who is known to everyone as a poet, but few people know that he also wrote screenplays. That very film was recently screened at the European and Mediterranean Film Festival in Tebinje as a tribute

to Duško. I was president of the Council and artistic director of the March Festival. Even the world's greatest directors increasingly return to the documentary form at a certain point. With some authors, you can't separate what in their work is documentary and what is fiction, like Wim Wenders, whom I greatly admire, as well as his entire body of work. In my case, it is also significant that I taught documentary film at the university, and that kept me closely connected to this form."

Lorencin is the recipient of the lifetime achievement award from the March Festival, as well as awards from the "Zastava film" and "Liburnia Film" festival in Rijeka, among others, but he admits with a smile that such recognitions 'don't really appeal to him'.

"With such awards, it's as if you're saying goodbye to yourself. It comes at the end, as if they're saying, "Here's your award, you can go now." I have quite a few of these 'papers', but what I cherish most are the years of film, when even the work on television was done and shot on film stock."

His great wish is to turn his family history, notes, and recordings – including those captured on the old 'double-eight' – into a film series.

"My connection to Pula goes back to my boyhood, to my childhood – that's where my love for film was born. My family descends from Istrian emigrants. In 1925, my grandfather Mate left Istria and his house in Medulin to



During the filming of Drava se ne predaje, photo: Miroslav Milić

He began his professional career as Aleksandar Saša Petrović's assistant, whose class he graduated from, and later also worked as his assistant at the Department of Film Directing at the Faculty of Dramatic Arts



UFUS AFA has been receptive and expanded its activities, supporting publishing in the field of film art and backing festival projects. I believe it would also be wonderful to find ways to support young filmmakers. There is so much the organization could do, as UFUS AFA enjoys great prestige and should wield corresponding influence.



Ljubica i Grgur,
photo: Martovski festival

come to Novi Sad. He didn't even know where Novi Sad was. A friend of his, an engineer from the Czech Republic, invited him because, after the Great War, there was famine in Pula, and the shipyard where my grandfather used to work had gone under. He started working at "Ikarus", the first airplane factory. So, today I can say that my grandfather helped lay the foundations of Yugoslav aviation. In honor of my family and in recognition of my ancestors' exile, I have so far made seven one-hour films under the collective title Luna Rosa (Red Moon). It is a tribute to my family, to my grandfather and my uncles, and perhaps the most important thing I have ever done. I hope I will find the strength to continue up to all that has recently befallen us, up to the wars. That is what I would like to accomplish before it all comes to an end."

Besides being a filmmaker and professor, Lorencin is also known as the author of numerous books on film, such as Džejs Džojcs i film (James Joyce and Film), the monograph 50 godina Martovskog festivala (50 years of the March festival), and others. He received funding for his new book through the UFUS AFA competition.

"Last year, I received funding through the UFUS AFA Cultural Grants Competition to publish the book *Nekad i sad: istorija i estetika dokumentarnog filma* (Then and now: History and Aesthetics of Documentary Film). In collaboration with Film Center Serbia, it should soon go



Drava se ne predaje, photo: Miroslav Milić

to print; I still need to do one more revision of the text. UFUS AFA was receptive and expanded its activities, which is something I had personally advocated for within the organization, namely, support for publishing in the field of film art and for festival projects. I believe it would also be wonderful to support young filmmakers, to at least partially fund their participation in professional training, masterclasses, and perhaps support their screenwriting projects. There is so much that an organization like UFUS AFA could do. We, as members, get excited when the annual assembly takes place, when we vote on the distribution of royalties, but you can see how much room there is for action, as UFUS AFA enjoys great prestige and should wield corresponding influence."



LEGAL ADVICE

Photo: Aleksandar Carević



Stevan Pajović

Lawyer at TS Legal

Can the suspension of text and data mining rights in the EU be applied to artificial intelligence training?

In the world of technology, generative artificial intelligence (GenAI) is revolutionizing the way we create content. Namely, GenAI analyzes large amounts of data and, based on that, creates new content – ranging from texts, images, and music to code. However, intellectual property regulations are not adapted to govern such processes, which leads to legal uncertainty. There are two types of uncertainties in this context: the first concerns whether GenAI operators have infringed intellectual property rights during the training process – that is, whether copyrighted works of third parties were used to train their models without proper authorization. The second uncertainty concerns whether works generated by AI can be protected under intellectual property

law. These uncertainties create serious problems: for creators, because their works may not be protected against misuse or unauthorized use, and for companies developing and using AI systems, because they cannot be sure whether they are operating within the legal framework, which can jeopardize their lawful business operations and development.

Starting from the fact that copyright is protected from the moment a piece of work is created, authors are granted a broad range of rights, from the right to reproduce and communicate their work to the public to the right to modify it. However, these rights are subject to numerous exceptions and limitations that serve the broader public interest, for example, in the areas of education, research, and criticism. The key is to establish a fair balance between the protected rights of authors and the interests of society as a whole. In the digital age, achieving this balance has become increasingly complex, particularly with the emergence of technologies such as generative artificial intelligence, which challenge traditional notions of authorship, originality, and creation.

Generative artificial intelligence is a branch of AI that focuses on creating new content, such as texts, images, sounds, or video materials, based on learned patterns from large datasets. The basic idea is that these systems utilize statistical relationships and patterns in the data they have in order to generate new, original content that has not existed before, often imitating the style or characteristics of the sources on which they were trained. However, the question arises as to whether such training is legal, since it is carried out using the intellectual property of others without their permission or a licence. This raises doubts as to whether the process complies with existing laws.

In practice, in the absence of other regulations, the training of artificial intelligence often relies on the suspension of copyright for text and data mining (TDM) provided by the Directive on Copyright and Related Rights in the Digital Single Market (EU) 2019/790. TDM is the process of automatically or semi-automatically analyzing large amounts of text or data to uncover patterns, information, or knowledge that is not immediately apparent and that can provide useful insights for scientific and other research purposes. Thus, Article 3 of the Directive stipulates that research organizations and institutions such as universities and museums may carry out text and data mining for scientific purposes without the permission of rights



holders. Article 4 extends this possibility to commercial mining, provided that the content has been legally obtained and that the rights holders have not explicitly prohibited such use, for example, through machine-readable terms. In short, these articles allow scientific, research, as well as commercial text and data mining, subject to certain conditions and with respect for the rights of content owners.

There are several reasons why, in our opinion, the TDM provisions do not apply to AI system training. First and foremost, TDM technologies and generative artificial intelligence serve different purposes. TDM, which falls under data science, focuses on analyzing existing information to identify patterns and connections, with the goal of extracting knowledge. It is primarily an analysis that does not alter the content but reveals its structure and correlations. In contrast, GenAI uses large datasets to create new content, such as texts, images, or sounds. In doing so, the algorithm combines and adapts patterns from the training dataset and then utilizes them by ‘remembering’ them, meaning that the model ‘learns’ how to imitate the style, structure, and characteristics of the original content. This enables it to create entirely new content that resembles the originals and often competes with them on the same market. In short, while TDM searches for patterns in existing data for analysis, GenAI uses these patterns for synthetic expression and the creation of entirely new content. This represents a significant difference in the function and legal interpretation of these two technologies.

Furthermore, the TDM exception can be used for commercial purposes only if the author has not explicitly stated that they oppose such use (an opt-out mechanism), but in practice, this system has serious shortcomings. Firstly, it is not clear how exactly it functions and how effective it is, especially regarding rights protection. The system requires authors to actively use technological methods to protect their rights, which may be contrary to the fundamental principle of copyright that protects these rights without any formalities. Moreover, this system assumes that most authors have sufficient technical knowledge and infrastructure, which many small creators do not possess, so rights protection is not provided equally to everyone. In the absence of collective licences or a default opt-in option, the opt-out mechanism does not provide fair protection and

primarily benefits large platforms, which can easily use the content until authors request to be excluded. As a result, this system does not offer legal certainty but rather creates a legal vacuum in which innovations occur without clear rules.

It is particularly important to note that there is currently no effective system ensuring fair remuneration for rights holders whose content is used for GenAI training, which raises serious concerns within the creative and cultural industries. GenAI creates content that imitates the style and expressions of authors, thereby directly competing with them on the market, while using their work without consent or fair remuneration. This not only reduces authors’ income but also makes it more difficult for them to exercise their rights and derive economic benefit from their own work.

Finally, it is also important to raise the issue of authors’ moral rights, particularly the right to the protection of the integrity of the work and the right to adaptation or modification. When works generated by GenAI directly derive from the original works on which the AI was trained, they cannot be regarded merely as data or content, but also as works carrying moral and authorship significance. In many cases, such generated works represent modifications or reinterpretations of the original works, thereby undermining the integrity and the authors’ creative expression. This can create a serious ethical dilemma and a violation of the authors’ moral rights, especially when their works are used or transformed without their consent, in situations where such alterations compromise the reputation, honor, or authorial identity of the creator. Therefore, it is crucial to also consider the protection of moral rights within the legal system, particularly in light of the rapid development of technology.

In short, the conclusion is clear: the current legal framework, particularly the TDM provisions of Directive 2019/790, is not robust or clearly defined enough to regulate the complex processes involved in training generative artificial intelligence. It is necessary to adapt the regulations and establish clear mechanisms that will enable a balance between innovation and the protection of content creators’ rights, while simultaneously allowing for the ethical and legally compliant development of AI technologies in both European and global contexts.



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