

## The 5<sup>th</sup> IMRO/Law Society Annual Copyright Lecture

### **“Music Copyright: The Text and Data Mining Exceptions and the EU’s AI Act”**

Artificial Intelligence (AI) is arguably the most disruptive of all the emerging technologies. The AI revolution continues unabated and generative AI has embedded itself in many of the most widely used digital products and services. Examples of well-known generative AI applications include OpenAI’s ChatGPT and the AI writing assistant, Scribe.

2023 proved a watershed year for the music industry and AI. Very rapid developments in generative AI caused considerable concern and challenges for musicians and performers. AI-generated music and synthetic voices poses many dangers to the music sector not least in terms of over-supply of music content and the inevitable knock-on effects on musicians’/performers’ income.

From a legal perspective a broad text and data-mining (TDM) exception is conducive to generative AI. Jurisdictions such as the EU, Japan and Singapore all have a broad TDM exception but the situation in the EU is nuanced by the fact that the relevant legal provision, i.e. Article 4 of the CDSM Directive contains a reservation. In other words, Article 4 permits rightholders to expressly reserve their works in an appropriate manner such as by ‘machine-readable means in the case of content made publicly available online’. This means that the EU copyright regime allows for the TDM exception to be overridden by a rightholder opting out (or contracting out) of it. Interestingly, in the UK, a broad TDM exception was proposed by the UKIPO but this was rejected by the music industry there. In February last year, the UK government did a U-turn and announced that the proposal would be abandoned. Instead, a code of practice on copyright and AI will be adopted and this may occur over the coming months. Should agreement on a code of practice not be reached, the UK government may go down the legislative route

The U.S. does not have a copyright exception for TDM. Instead, generative AI and its results can arguably be accommodated under the fair use doctrine, in particular, where the contemplated use is ‘transformative’ in nature. However, copyright holders in the U.S. are resisting this approach and are arguing that this should only happen with their consent (an opt-in system) (The New York Times case).

At this year’s Annual Copyright Lecture, the following issues (among others) will be discussed: The international approach to TDM and how various countries have dealt legislatively with a TDM exception; What constitutes an effective reservation (or, opt-out) for the purposes of Article 4, CDSM Directive?; The technological dimension: might technologies be deployed to identify (and respect) reservations made by

rightholders under Article 4, CDSM Directive? and; how will the EU legislature deal with the TDM exception in the context of finalising the AI Act?

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