FIM statement on AI in music

The music sector is regularly confronted with disruptive technological innovations impacting the industry, the public and the artists. Certain historical changes perceived today as progress could, at the time, destabilise the employment of performers, weaken their income and profoundly modify their way of working. This was the case with radio, the LP, the minicassette, the CD, and computer music, more recently with downloading and streaming, and now, with artificial intelligence.

The evolution of the normative framework can help balance these effects for the different parties concerned. For music performers, the Rome Convention and the WPPT have provided welcome solutions regarding broadcasting and communication to the public. Unfortunately, these instruments have so far failed to effectively regulate download and streaming, with Article 10 of the WPPT, as currently implemented, not allowing artists to benefit from a fair share of the revenue generated by the online exploitation of their recordings.

Recent advances in generative artificial intelligence and the techniques implemented for machine learning suggest an analogy with human learning mechanisms. Students learn from their teachers and environment. They take the geniuses of the past as models and cannot ignore the influences that permeate the gradual acquisition of their skills. The creative act, therefore, never starts from a blank page. By analysing and assimilating existing works, the machine follows a comparable path. However, this analogy quickly reaches its limits. Indeed, the volume of data ingested by the machine and the speed at which it collects and assimilates this data are incommensurate with what the human mind is capable of. This is a new paradigm which, on this point, differs radically from the knowledge acquisition process at work in humans.

Machine learning thus consists of appropriating all the creations of the human mind currently accessible to analyse and restore them on demand in real-time in sometimes new forms – but not always. The maturity of the various AI services available to the public has recently allowed the emergence of a competitive and fast-growing market. This development, which has both economic and strategic implications, offers considerable profit prospects. However – and this is no surprise – this new ecosystem does not provide any authorisation or remuneration mechanism for the community of creators whose work and talent are exploited in proportions beyond comprehension.

It is legitimate and urgent to examine the question of consent and fair compensation, based partly on the existing regimes of copyright and neighbouring rights. These two concepts, as they have been designed, do not seem able to respond satisfactorily to the particular problems posed by generative AI, whether for incoming or outgoing data.

Concerning the copyright protection of content produced by AI or with its assistance, this is a new and complex question that gives rise to discordant decisions depending on the country. At this stage, deciding firmly between the copyrighting of AI-generated content and its classification as public domain is challenging.

Concerning transparency on the sources used for content generation, the AI tool at the origin of the content should guarantee that all creators' rights have been respected, which requires detailed information on the sources used. It is also essential that the public is informed of the nature of the content so that they know whether they are dealing with the work of a human mind or an AI product.

Regarding incoming data, the AI regulation recently adopted by the European Union and the provisions on TDM provided for by Directive 2019/790 on Copyright in the Digital Single Market give only a partial answer. As it stands, Article 4 of the 2019 directive only allows rights holders to reserve their rights through

"machine-readable means in the case of content made publicly available online". While these provisions have existed for almost five years, there are still no validated and standardised *machine-readable means*, which makes this opt-out mechanism purely theoretical. Furthermore, since music performers generally transfer their exclusive rights to a producer, they can no longer exercise this option once the transfer has occurred. Artists should have the right to prohibit access to their recordings by AI for TDM purposes in an effective manner, including after the transfer of their exclusive rights.

Generally speaking, the central question for artists is, once again, their remuneration. It is not acceptable that they can be the victims of large-scale exploitation of their recordings or unauthorised use of their voice or image without any financial compensation.

We consider that the notion of "free, prior and informed consent", as used in the *United Nations Declaration on the Rights of Indigenous Peoples*, could inspire a mechanism for protecting human creative heritage when it is used by AI, whether for profit or not. To the extent that AI-generated content draws its value from human creations exploited on a large scale, it seems relevant to consider mandatory compensation mechanisms benefiting the creative community and applying to all generative AI tools.

FIM and its members are ready to contribute to this reflection as they have done during all WIPO debates concerning the recognition and protection of the intellectual property rights of performing artists.

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International Federation of Musicians
office@fim-musicians.org
https://www.fim-musicians.org