

CALL FOR EVIDENCE ON EU COPYRIGHT RULES

Response of Initiative Urheberrecht (Authors' Rights Initiative, Germany)

Berlin, June 26, 2026. Initiative Urheberrecht represents the interests of authors and performers in Germany. It brings together 44 member organisations representing more than 140,000 creators and performing artists across the full range of creative professions, including, central to this submission, illustrators, photographers, translators, journalists, composers and performers. We welcome the opportunity to contribute to this Call for Evidence, which we understand to serve both the review of the CDSM Directive under Article 30 and the preparation of a further targeted legislative initiative expected in Q1/2027.

Initiative Urheberrecht has already submitted a separate, detailed response to the Commission's consultation on the evaluation of the CDSM Directive, addressing especially the implementation of Articles 18 to 23 across Member States. This submission is complementary. It focuses on the question of what a targeted legislative initiative on copyright and generative AI should contain, drawing in particular on the specific exposure of visual and text creators, specifically journalists, music creators and other creative professions. Where relevant, we also draw on the evaluation findings to show why contractual mechanisms alone cannot resolve the problems we describe.

A. The Core Problem Is The Current Structural Lack Of Rules In The Age Of AI

The Commission's Call for Evidence rightly identifies that rightholders have significant difficulties in “controlling and licensing their works for AI uses”. Our member organizations’ experience across illustration, photography, translation, script writing, journalism, film authors like directors et al. and music confirms this, but also shows that the nature of the harm, and therefore the appropriate remedy, differs by sector. A single policy response risks missing some of these harms while over-engineering solutions for others. We set out below the sector-specific evidence before turning to our cross-cutting recommendations.

1. Visual Artists – i.e., Illustrators And Photographers

The harm operates on both sides of the AI pipeline. On the input side, reproduction of images is necessarily of the whole work, at scale. On the output side, generative image models reproduce recognizable elements of individual artistic style without engaging the work-based threshold copyright ordinarily requires. A protection gap between copyright (which protects works, not styles) and unfair competition law (not designed for AI-scale imitation). Stock platforms have also unilaterally amended business models and license terms to permit or restrict AI training, but without renegotiating compensation with the individual rightholders whose works they offer. This is precisely the fact pattern now before German courts in *Kneschke v. LAION* (Section C below), where a photographer's image, published via a stock agency with restrictive terms of use was nonetheless held to fall within the TDM exceptions.

2. Translators

Machine translation tools have been trained on large corpora of professional human translations without consent or remuneration. Translations are protected adaptations under Article 2(3) Berne Convention and Art 4 InfoSoc Directive, however, this protection is practically unenforceable against AI training at scale. The professional consequence is already clearly visible. Post-editing of machine output is replacing translation as a profession, where still services are asked for, this happens typically at substantially reduced rates. We ask the Commission to recognise translations explicitly as a training-data category requiring dedicated attention in the impact assessment, given the advanced state of replacement already observed in this sector. It should be noted that translators have no chance to declare opt-outs for their works due to their position low in the usage chain and dependent on publishers.

3. Journalists

Article 15 of the DSM Directive created a related right for press publishers but does not directly secure remuneration for the journalist-authors of the content. The author participation depends on uneven national transposition of obligations to share revenue. Generative AI systems, including retrieval-augmented generation (RAG) architectures using live web content now substitute visits to original sources and destroy the traffic-based publisher revenue from which authors should be paid their share. This is a further effect Article 15 was not designed for: it presupposes a publisher revenue stream that content now accessed via AI tools actively destroys. We recommend the review explicitly assess this interaction, and that the targeted initiative considers an author share not dependent on publisher revenue persisting in its current form.

4. Other Text Authors

We also recommend the review of copyright compliance rules for publishing platforms such as Amazon, which commercialize AI generated output resembling or replacing human works. In the context of the ongoing Penguin Random House v. OpenAI case (LG München I), we hear that thousands of books (printed books, e-Books, copyright infringing translations, audiobooks and other formats such as title seemingly fitting into series of works) generated by AI are uploaded on Amazon every day, deceiving consumers about their nature and origin, often using titles and names of well-known human authors. These business models must be reviewed and restricted in the interests of European consumers.

5. Music Authors – Especially Composers And Performing Musicians

Musical works in all its forms, score, MIDI and (live or streamed) audio form are central training material for generative music systems, and outputs that closely imitate an identifiable style raise the same protection-gap concern. Composers' conventional royalties are collectively managed via performing rights organisations such as GEMA, but no equivalent mechanism currently captures AI-related use in output, despite readily available collective management infrastructure.

For performers, the most acute harm is impersonification: synthetic replication of an identifiable voice or performance, used to generate recordings the performer never made. This harm exists independently of whether the output meets ordinary work-quality thresholds, and existing frameworks (Article 8 Rental and Lending Rights Directive, national personality-rights law) were not designed for it. Performing musicians and producers are separately and directly affected by the remuneration problem where AI interrupts usage and work related business models.

6. Film Authors – No Protection And Transparency At All

For the film authors we would first like to rely on the statement of the SAA (Society of Audiovisual Authors) for this call for evidence to all problems of scope, transparency, right chains and the total lack of remuneration. Second we like to point the attention to the special legal situation of German Film Authors. The so-called “Special Provisions for Film” in German copyright law enforce a complete mandatory right transfer from film authors to producers. This discriminatory regulation makes it impossible for German film authors to make any right reservations to CMOs and prolongs all the difficulties of individual fights for fair and proportionate remuneration. In concern of AI and TDM it makes it impossible to sign or protect works not only against international AI-Companies but also against producers, broadcasters or streamers. This legal framework is a highway to substitution which has already started.

B. Recommendations for the Targeted Legislative Initiative

1. Confirm That The TDM Exceptions Do Not Extend To Generative AI Training Without Remuneration

Articles 3 and 4 CDSM Directive were drafted before generative AI of the current capability existed. The Commission should clarify through a targeted initiative rather than leaving this solely to litigation, that the TDM exceptions cover analytical extraction of patterns and information from works, and were not designed to allow wholesale use of expressive content as raw material for systems generating new, market-competing expressive output.

We further strongly demand a clear separation between Article 3 (research) and Article 4 (commercial) TDM: reproductions made by research organizations or cultural heritage institutions under Article 3 should not be used for feeding commercial model training by the same or affiliated entities or their contract partners. The uncertainty over where the research/commercial line sits, illustrated in Section C creates an incentive to structure AI training activity through nominally non-commercial vehicles which is a clear circumvention of the legislator’s intention.

2. Replace Purely Symbolic Transparency With Real Transparency

The GPAI training-data summary template under the AI Act has not resolved the problem of lack of transparency for rightholders. We recommend a disclosure obligation owed directly to rightholders and their CMOs, rather than a public summary alone. This should be accompanied by a rebuttable presumption of use, where a rightholder or CMO presents a reasonable basis and granularity sufficient to identify use by domain and by title.

3. Introduce A Remuneration Right For AI Training And Output Use

Rightholders advocate for licensing models for input-based remuneration and oppose the introduction of new exceptions for AI training. Individual licensing should remain the rule wherever it is practicable. However, a significant share of authors and performers cannot license their own primary rights at all because those rights have already been transferred, typically through buy-out contracts or employment-like arrangements to producers, broadcasters, publishers or employers. This is structurally the case for, among others, audiovisual authors, performing actors, and journalists working under standard employment or commissioning agreements. For these creators, no amount of strengthened individual licensing infrastructure changes the fact that they are not the party in a position to grant or withhold a licence for AI training or output use.

For this reason, we propose a direct, unwaivable remuneration right in favour of the individual author or performer, payable in addition to whatever licensing arrangement governs the primary exploitation of the work and administered through collective management. This ensures that the creators who contributed the underlying work share in AI-related revenue regardless of who currently holds the exploitable rights.

Separately, and only as a complementary instrument, Extended Collective Licensing (ECL) under Article 12 CDSM Directive may have a role in specific sectors where a collective management organization already holds a sufficiently representative repertoire to justify an ECL mandate, for example, in domains with established, high-coverage collective management traditions. We do not propose mandatory ECL as a general solution for AI training across the creative sectors: outside such domains, no CMO currently holds a repertoire representative enough to meet the Article 12 threshold, and we would caution against the Commission treating ECL as a substitute for addressing this gap. Where ECL is used, the individual right to opt out must remain genuinely available and effective, a safeguard the *Kneschke v. LAION* case (Section C) shows cannot be taken for granted in practice.

On the output side, we recommend that the remuneration mechanism be designed as a differentiated remuneration system, under which the level of payment reflects the degree of substitutive harm caused by a given AI provider's service, rather than a single flat fee applied uniformly across all generative AI uses. Where a service uses copyright-protected works only as an analytical input and does not generate output that competes with or substitutes for the affected creative sector, a comparatively moderate ongoing fee may be appropriate. Where a service generates substantial volumes of output that directly substitutes for human-created work in the relevant market, the remuneration must reflect that greater degree of harm. As with other statutory remuneration rights collectively administered under German law, we expect the differentiation itself — the relevant tariff categories, rates, and their adjustment over time — to be a matter for negotiation between the rightsholders, collecting societies and AI providers, subject to negotiations and based on empirical data, rather than fixed directly by the EU legislator. The Commission's role should be limited to establishing the principle that remuneration must scale with substitutive impact, leaving the operational tariff-setting to the bodies institutionally equipped for it.

The direct, unwaivable remuneration right as well as the ECL on the input side and the output remuneration could be collectively managed by existing CMOs along sectoral lines (visual, literary/translation, journalistic, musical). On the output side, usage-linked payment does not require that each individual output be traced to a specific work, which would be impossible in practice, but should instead be tied to a measurable proxy for the scale of substitutive use, such as the volume of outputs generated by a provider in a given category over a billing period, or the provider's revenue attributable to that category of output. This mirrors the approach collecting societies already take for non-individually-traceable mass uses, where royalties are distributed across the relevant repertoire according to an agreed distribution scheme rather than per-use tracing.

A lump-sum payment scheme, as is often suggested, would in our assessment ultimately damage the affected creative professions. A single payment at the point of training separates remuneration entirely from the ongoing commercial value a trained model generates over its operational life, often spanning many years. This recreates, at AI scale, the same structural problem already documented in the audiovisual sector's buy-out contract practice, where Article 18 CDSM Directive's promise of appropriate and proportionate remuneration has largely failed. A single payment shifts the entire risk

of undervaluation onto the author or performer. Lump sum payments also often create a race to the bottom that displaces fairer alternatives from the market even where those alternatives exist.

We draw a sharp distinction from ECL under Article 12, which is designed for orphan works and out of commerce works and operates on a presumption of consent: once a representative CMO is authorized, the use is treated in law as licensed unless the rightsholder has actively and timely opted out. Applying this model to AI training would mean that, for any rightsholder who has not opted out in time, the use is legally fiction as authorized, which does not help rightsholders who object in principle to their works being used for AI purposes at all (a position our illustrator and composer members report holding widely), since their only possibility is to opt out before use occurs. A liability rule with continuing payment operates differently: it imposes a payment obligation without legally characterizing the underlying use as licensed, so it leaves untouched a rightsholder's ability to separately opt out or challenge whether the use was lawful in the first place, while still ensuring that, in the meantime, payment flows for the huge amount of uses that do occur.

4. Address Impersonification As A Standalone Protected Interest

The targeted initiative should introduce explicit protection against unauthorised AI-generated synthetic replication of a performer's voice, likeness, or specific performance characteristics. This should be independent of whether the output otherwise qualifies for copyright or related-rights protection and must avoid relying on divergent national personality-rights legislation.

C. Risk Of Relying On Court Decisions Alone: The Kneschke v. LAION Proceedings

The limits of the existing legal framework are not abstract. They are being tested currently in German courts, in a case that illustrates precisely the risk our members have raised: that the boundary between the research exception (Article 3 DSM Directive, transposed as Section 60d UrhG) and the general commercial TDM exception (Article 4 CDSM Directive, transposed as Section 44b UrhG) can be abused in ways that leave rightsholders without opt-out and without remuneration claim despite obvious commercial intention of use.

1. The Proceedings To Date

The case concerns the photographer Robert Kneschke, whose image, published via a stock photography agency whose terms of use prohibited automated/programmatic use was downloaded by the alleged non-profit association LAION e.V. as part of the construction of the LAION-5B dataset (5.85 billion image-text pairs), subsequently used to train generative image models including Stable Diffusion as was the intention of the construction from the very beginning, documented by the statutes of the Laion society clearly and in writing.

- The Hamburg District Court (Landgericht Hamburg, judgment of 27 September 2024, Case 310 O 227/23) dismissed the claim, finding LAION's activity covered by the Article 3 / Section 60d UrhG research exception, on the basis that LAION qualified as a non-commercial research organisation notwithstanding that two of its staff also worked for a commercial AI company, and notwithstanding that the resulting dataset was used by commercial developers.
- On appeal, the Hanseatic Higher Regional Court (Oberlandesgericht Hamburg, judgment of 10 December 2025, Case 5 U 104/24) confirmed the dismissal and went further, holding that the use was also covered by the general commercial TDM exception under Article 4 / Section 44b UrhG, expressly extending that exception to the training of generative AI models and to

preparatory dataset-compilation acts. The court held that the rightholder's opt-out, declared in natural language in the agency's terms of use, was not “machine-readable” within the meaning of Section 44b(3) UrhG as the provision stood in 2021, and was therefore ineffective.

- The Oberlandesgericht explicitly granted leave to appeal to the Federal Court of Justice (Bundesgerichtshof), citing the fundamental significance of the legal questions involved. Mr Kneschke, supported by VG Bild-Kunst, has lodged that further appeal. Oral hearing before the First Civil Senate of the Bundesgerichtshof is scheduled for 3 September 2026 in Karlsruhe.

2. The Circumvention Risk: Blending The Article 3 And Article 4 Exceptions

Our principal concern with the Hamburg appellate reasoning is structural rather than result-specific. Even if the TDM exceptions apply to training and subsequent uses within AI, which is still disputed and we believe, is not adequate: the legislator deliberately created two distinct exceptions with different conditions: Article 3 (research) carries no opt-out at all but is confined to non-commercial research organisations and outputs; Article 4 (general/commercial) is available more broadly but is subject to a rightholder opt-out. This was not incidental. It reflects a considered trade-off between research freedom and rightholder control.

By finding that LAION's conduct satisfied both exceptions simultaneously. Article 3 because LAION is structured as a non-profit research association, Article 4 because the opt-out was held technically ineffective. The Hamburg courts have, in our reading, destroyed the differentiation the legislator intended. An entity can be treated as a qualifying research organisation under Article 3 while the resulting dataset is openly distributed for, and in fact used in, commercial model training by third parties. Separately, even where a rightholder actively reserved rights, the Article 4 opt-out can be defeated by a finding, made years later that the chosen method did not meet a machine-readability standard assessed against the state of the art at the time of the original use, not the time of the dispute. It must be noted that still, years after the first coming to market of large generative AI systems, there is not available and respected opt-out system, free of charge available and efficiency proven.

This combination works as a recipe for circumvention: a structurally non-commercial entity can compile datasets under the research exception with no opt-out obligation at all, then make those datasets freely available to commercial developers, while a rightholder who did attempt to reserve rights under Article 4 risks a retrospective finding that their method fell short of an evolving, judicially defined standard.

This is not the only relevant German proceeding: in GEMA v. OpenAI (Landgericht München I, 11 November 2025, Case 42 O 14139/24), a different chamber reached a materially more restrictive position, holding that neither the TDM exceptions nor other copyright exceptions justify unauthorised use of protected content such as song lyrics. The coexistence of these two is itself evidence that the current framework lacks the legal certainty both rightholders and AI developers need, and that this cannot be left to incremental, fact-specific national litigation to resolve.

3. Why This Matters For The Targeted Initiative Of The Commission

It shows clearly that the TDM exceptions as such do not fit to the complex technical and legal situation for AI data collection, training and storage within systems, nor to reproduction of training materials in AI output (please see Dornis / Stober, Urheberrecht und Training generativer KI-Modelle - technologische und juristische Grundlagen 2024, for further detail:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4946214).

We see that Article 3 / Article 4 boundary cannot depend on an entity's formal non-profit status where its output is, in substance, an input to commercial AI development. The targeted initiative should clarify that all datasets produced under the Article 3 research exception may not be made available for commercial AI training without triggering the conditions, including opt-out and, under our recommended reform, remuneration.

If and when Art. 3/Art. 4 applies – which we strongly believe is both legally and technically wrong and which must be clarified as soon as possible: “Machine-readable” opt-out standards must be defined as to be respected on a mandatory basis, not left to retrospective judicial assessment of historic technological capability. Rightholders need to know, at the time they act, what will count. The pending Bundesgerichtshof reference shows that Germany's highest civil court itself regards these questions as requiring legislative-quality clarification, not case-by-case judicial development. The Article 30 review and the targeted initiative are the right venue to provide that clarification at EU level, rather than leaving harmonised exceptions to diverge through uncoordinated national case law.

D. Why Voluntary And Alternative Dispute Resolution Mechanisms Are Not A Substitute

We note that the Call for Evidence lists “facilitating licensing through mediation or arbitration” among the policy options under consideration. Our member organisations' experience, supported by sister organisations such as SAA and IFRRO across the audiovisual, text, music and visual sectors is that the bargaining-power asymmetry between individual creators (or even collectively organised creators) and AI developers is too large for voluntary mechanisms to produce fair outcomes within a reasonable timeframe. Mediation and arbitration presuppose two parties with comparable incentives to reach agreement; here, one party (the AI developer) currently faces no legal cost from declining to negotiate at all and has all interest in delaying all procedure, while the other bears the full cost of continued non-remuneration. Justice delayed is justice denied.

Until a statutory remuneration right changes that incentive structure, voluntary mechanisms will function as a further possibility of delay rather than a path to fair resolution.

Conclusion

Authors and performers across illustration, photography, translation, journalism and music face converging but distinct harms from the current generation of generative AI systems, and the existing EU copyright framework, including the DSM Directive's TDM exceptions and the AI Act's transparency provisions has not been sufficient to secure either meaningful control over, or fair remuneration for, the use of their works. The ongoing German proceedings in *Kneschke v. LAION* demonstrate concretely how the boundary between the research and commercial TDM exceptions can be eroded through structuring choices that the legislator did not anticipate, while the contrasting outcome in *GEMA v. OpenAI* shows that national courts are not converging on a stable answer.

We urge the Commission to use the targeted legislative initiative to:

- clarify the scope and interaction of the Article 3 and Article 4 TDM exceptions in the generative AI context introduce a remuneration systems covering both the input (training) and output use, structured to preserve individual opt-out rather than displacing it through an ECL-style mechanism;
- make transparency obligations actionable; and
- introduce standalone protection against AI impersonification of performers.
- Initiative Urheberrecht and its member organisations remain available to provide further evidence, including sector-specific data, as the Commission's impact assessment proceeds.

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