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The legal, policy, and market impact of Artificial Intelligence on text and image-based works

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ABOUT IFRRO'S STUDY ON *THE LEGAL, POLICY, AND MARKET IMPACT OF ARTIFICIAL INTELLIGENCE ON TEXT- AND IMAGE-BASED WORKS*

IFRRO is an independent, non-profit membership association that facilitates, at international level, the collective management of reproduction and other rights in text- and image-based works through cooperation among its member Reproduction Rights Organizations (RROs). IFRRO brings together over 160 members from some 90 countries worldwide, representing many millions of authors, visual artists and publishers of books, journals, newspapers, magazines and printed music. IFRRO's mission is to develop and promote effective collective rights management so as to ensure that the copyrights of authors and publishers are properly valued through the lawful and remunerated use of text- and image-based works. In pursuing this mission, IFRRO is guided by the values of trust, diversity and commitment, and acts with tolerance and respect in its engagement with members, policymakers and stakeholders.

This study, *The Legal, Policy, and Market Impact of Artificial Intelligence on Text- and Image-Based Works*, is the result of IFRRO's continued collaboration with Professor Dr. Eleonora Rosati, a leading expert on copyright and AI. It builds on IFRRO's broader work on artificial intelligence, including the AI Advocacy Toolkit and the AI Governance Guide, by examining one of the most important questions at the heart of the copyright and AI debate: what harm is being caused to authors, publishers and other rightholders, and how should the law and policymakers respond?

The rapid development of generative AI has created new opportunities, but it has also brought increasingly visible consequences for the text and image sector. Copyright-protected works have been used at scale for AI training without the consent or remuneration of rightholders in numerous instances, while AI-generated outputs are increasingly entering the same markets as human-created works. Against this background, this study examines the concept of "harm" from legal, policy and market perspectives, combining analysis of copyright principles, emerging case law and existing market evidence with the results of IFRRO's 2026 global survey of nearly 2,000 respondents including authors, publishers and RROs reached through IFRRO's membership. The findings underline the need for a sustainable AI ecosystem in which rightholders can control and meaningfully consent to the use of their works, copyright principles are effectively upheld, appropriate licensing solutions can develop, and robust transparency is ensured.

Ultimately, the study seeks to contribute to a more sustainable relationship between AI and the creative ecosystem, one in which technological development and strong copyright protection reinforce, rather than undermine, one another, by calling for authors and rightholders to be able to control and consent to the use of their works, for policymakers and courts to uphold established copyright principles and prevent undue harm, and for transparency obligations to apply across both the training and output-generation phases of AI systems.

EXECUTIVE SUMMARY

Existing studies agree that the market size of Artificial Intelligence ('**AI**')-generated outputs will continue growing. This growth has, however, also negatively impacted authors and rightholders in the creative sectors. First, the use of copyright works and other protected subject-matter for training purposes (including initial training, fine-turning, continued pre-training, retrieval-augmented generation, etc) has often been undertaken without the consent of, and remuneration to, concerned rightholders. Second, the advent of generative AI ('**genAI**') outputs has been causing economic harm in different forms, such as layoffs, lost clients, reduced and lost revenues (including zero-click searches).

This IFRRO study examines the concept of 'harm' in copyright law and, specifically, its relevance to the rise of genAI and its impact on authors and rightholders. It does so by reviewing its legal, policy and market significance. First, the analysis identifies the meaning and function of 'harm' both in general copyright law and in AI-specific contexts, including existing case law and policy documents. Second, it considers recent market studies identifying and evaluating the impact of genAI before unveiling the results of a survey conducted in mid-2026 among IFRRO members all around the world.

'Harm' in copyright law: While the notion of 'harm' may not be explicitly referred to as such in several statutes, across the international and regional three-step test, UK-style fair dealing, and open-ended fair use-style doctrines (US, Singapore, South Korea), courts and legislatures are precisely required to consider the same key question: whether a certain, unauthorized use of a copyright work or protected subject-matter causes undue harm to the rightholder by conflicting with the normal exploitation thereof. If that is the case, no defence shall apply and the use in question shall be considered an infringement of that rightholder's copyright and/or related rights. Such an understanding of 'harm' has also found its way into the emerging case law on AI and copyright. Furthermore, it has been considered in relevant governmental documents across different jurisdictions to conclude that rightholders' consent is required to use their protected content for AI training purposes.

Market impact of genAI and IFRRO members' survey: Studies across the music, audiovisual and publishing sectors reach a consistent conclusion despite differing methods and geographies: genAI has been giving rise to measurable and, in some cases, already-quantified revenue displacement. At the same time, a licensing market for AI training is an established and growing commercial reality. These findings are broadly confirmed by the 1,993 responses received in the context of the IFRRO members' survey that ran between 25 June and 24 July 2026.

• More than 9 respondents out of 10 agree that genAI has already negatively impacted their earnings citing, as concrete examples, unauthorized training of large-language models ('**LLMs**') on their protected content, market-flooding AI slop, layoffs, declining and lost revenues, wrongful AI-use accusations.

• More than 3 respondents out of 4 are concerned that AI will ultimately displace creative workers.

• The near totality of respondents does not consider the current framework adequate to protect them, criticizing the lack of AI-specific rules to uphold copyright and related rights protection, weak enforcement and sanctions, and the interpretation of existing provisions in ways that in several instances appear to unduly favour AI developers.

• More than 1 respondents out of 2 believe AI-specific licences will greatly improve their economic situation. Many warrant that licences must be forward-looking, enforceable, and structured so that individual authors and smaller rightholders also benefit.

• More than 3 respondents out of 4 believe human-generated content will ultimately be preferred to AI-generated content but warn that this preference can only operate in practice if consumers are able to tell the two apart, which they consider to be unlikely without meaningful transparency obligations on the side of genAI deployers.

Conclusions and recommendations: A situation in which large-scale, unauthorized uses of protected content is allowed to proceed without consent, transparency or remuneration breaches the 'fair balance' mandate that informs copyright law, contravenes existing international, regional and national statutes, and is economically unsustainable. The study concludes that genAI can only advance in a manner that is respectful of authors' and rightholders' rights, if three basic conditions are met:

• Rightholders are able to control and consent to the use of their content on terms they can meaningfully negotiate.

• Policymakers, legislators and courts alike uphold the longstanding principles underlying copyright and related rights, including guaranteeing their 'high level of protection', and avoid that undue harm is caused to authors and rightholders.

• Robust transparency obligations are introduced and enforced, covering both LLM training and output-generation phases.

CONTENTS

1.	‘Harm’ in copyright law	6
1.1.	International and EU three-step test	8
1.2.	Fair dealing	9
1.3.	Open-ended fair use doctrines (US, Singapore, South Korea)	10
2.	AI and copyright: Case law and policy	12
2.1.	Europe	13
2.2.	Open-ended fair use-style doctrines	13
3.	Market impact of genAI	16
3.1.	Existing market studies	17
3.2.	IFRRO members’ survey 2026	18
	a) Impact on earnings	20
	b) Displacement effects	22
	c) Confidence in the law	22
	d) Licensing	24
	e) Value of human-generated content	24
3.3.	Importance of consent and a fair policy and legal environment	26
4.	Conclusions and recommendations	28

TABLE OF ABBREVIATIONS

AI	Artificial Intelligence
GenAI	Generative Artificial Intelligence
AG	Advocate General (Court of Justice of the European Union)
CJEU	Court of Justice of the European Union
CMO	Collective Management Organization

INTRODUCTION

The rapid rise of generative AI (‘*genAI*’) has opened up new possibilities but also given rise to significant challenges. While existing studies agree that the market size of Artificial Intelligence (‘*AI*’)-generated outputs will continue growing, all of this has often negatively impacted authors and rightholders in the creative sectors.

First, the use of copyright works and other protected subject-matter for training purposes – by that meaning initial training, fine-turning, continued pre-training, retrieval-augmented generation (‘**RAG**’), etc – has occurred without the consent of concerned rightholders in several instances and authors and rightholders have not received any remuneration for such use of their content. Second, the advent of genAI outputs has been causing economic harm in different forms, such as layoffs and declining and lost revenues (including ***zero-click searches***).

Starting from the widespread references to ‘harm’ in both the emerging case law on copyright and AI and the negative implications stemming from both the unauthorized use of protected content for AI training purposes and the growing market for genAI outputs, this IFRRO study seeks to understand the notion of ‘harm’ and to determine whether, and how, its extent in the context of genAI can be reduced going forward.

To this end, the study begins with an analysis of the existing legal framework (§1), as also applied in relevant case law, in order to identify how legislatures and courts construe and apply the notion of ‘harm’. Courts consider whether the defendant’s conduct, consisting of the unauthorized use of the plaintiff’s copyright work and/or other protected subject-matter, has caused an undue ‘harm’ to them. That serves to decide whether such conduct should be held an infringement of copyright and/or related rights or should be, instead, excused by an exception. That is because the notion of ‘harm’ is part of the analysis mandated under the international and regional (e.g., EU) three-step test, and is also a key aspect of the assessment required under national doctrines like fair dealing and open-ended fair use-style provisions. In turn, it also informs the evaluation of unauthorized uses of protected content for training purposes (§2).

The analysis then turns to identifying the types and effects of the ‘harm’ that the advent of genAI has been causing on the market for human-generated works and subject-matter (§3): after reviewing existing analyses on the market effects of genAI in a variety of sectors, this study reports for the first time on the results of a survey conducted among IFRRO members between 25 June and 24 July 2026 , which attracted nearly 2,000 responses from all around the world.

Ultimately, the study joins the legal and market analysis to advance key recommendations that should inform the relationship between AI and copyright going forward (§4). Compliance with such recommendations is required to preserve – when not restore – the ‘fair balance’ mandate under copyright law (see, e.g., ***WCT preamble***, ***recital 31 EU InfoSoc Directive***, ***recital 6 EU DSM Directive***) and to ensure a ‘high level of protection’ of copyright and related rights (see, e.g., ***recitals 4 and 9 EU InfoSoc Directive, recitals 2 and 3 EU DSM Directive***).

1
'HARM' IN COPYRIGHT LAW

There is no international copyright instrument that refers to the concept of 'harm' as such: the equivalent phrase 'undue prejudice' is used instead. The concept of 'harm' is thus inherent to the assessment required as part of the ***three-step test*** analysis to determine if an 'unreasonable prejudice' to the legitimate interests of the rightholder has been caused by the defendant's unauthorized conduct. If that is so, no exception will be available. In essence, consideration of ***whether the defendant's conduct has caused undue harm to the concerned rightholder and their interests is part of the overall copyright infringement test.***

At the national level, the assessment of the 'harm' caused to the rightholder's rights and interests is conducted by courts as part of the **fair dealing** analysis in countries that require it (like, e.g., the UK), and has been referred to within the fourth factor of the **fair use** doctrine in inter alia US case law.

If, upon establishing prima facie infringement, a court considers that the defendant's unauthorized conduct has caused undue harm to the legitimate interests of the rightholder, in the sense that it goes beyond what could be reasonably tolerated by the doing of a restricted act without permission, no exception shall apply and the act(s) in question shall amount to an infringement of the plaintiff's rights (copyright and/or related rights).

In addition to the foregoing, it should also be recalled that it is widely accepted that **exceptions can only apply where the copyright work or protected subject-matter in question have been accessed lawfully**: lacking lawful access, no exception shall find application.

The United States Copyright Office has for example indicated that training of AI models on content that is known to be unlawful weighs against a finding of fair use (***United States Copyright Office, Copyright and Artificial Intelligence – Part 3: Generative AI Training (Pre-publication Version) (May 2025), p 52***). The same position has been said to apply under Japanese law (***Japan Copyright Office (JCO) (Copyright Division, Agency for Cultural Affairs, Japan), General Understanding on AI and Copyright in Japan – Overview – (Published by the Legal Subcommittee under the Copyright Subdivision of the Cultural Council) (May 2024)***). In the EU, the Court of Justice of the European Union ('CJEU') has held that the availability of exceptions in general presupposes prior lawful access, further linking such a requirement to the three-step test (***CJEU, ACI Adam and Others, C-435/12, EU:C:2014:254 ('ACI Adam'), para 38***).

The remainder of this section details what 'harm' means within the legal structures and doctrines referred to above (three-step test, fair dealing, fair use), and what role it plays there. All of this is necessary to then place these findings in the context of the emerging case law on AI and copyright.

All exceptions should be understood as being premised on a lawful access requirement which, in turn, must be intended as entailing the use of protected content whose publication (and the modalities thereof) has been authorized by the concerned rightholder or by law.

1.1. International and EU three-step test

All relevant international copyright instruments frame exceptions within the three-step test (***Article 9(2) Berne Convention***, ***Article 13 TRIPS Agreement***, ***Article 10 WCT***, ***Article 16(2) WPPT***, ***Article 13(2) Beijing Treaty on Audiovisual Performances***, ***Article 11 Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities***):

Limitations or exceptions to exclusive rights shall be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.

The three-step test is also referred to in regional instruments, including e.g. EU copyright directives. For example, both the ***EU InfoSoc Directive (Article 5(5))*** and the ***EU DSM Directive (Article 7(2))*** detail the three-step test requirements.

The three-step test consists of the three **cumulative requirements** referred to above, which also need to be assessed in accordance with their logical order, that is: as steps. Before determining whether a certain exception unreasonably prejudices the legitimate interests of the concerned rightholder, it is necessary to consider whether there is a conflict with a normal exploitation of protected content and, prior to that, whether the exception or limitation at hand only applies to certain special cases (***WTO, United States—Section 110(5) of the US Copyright Act, WT/DS160/R, 15 June 2000 ('United States—Section 110(5)'), §6.160***).

The 'certain special cases' requirement means that solely specific, purpose-driven exceptions to copyright and related rights are allowed. The second prong of the analysis is that the exception in question does not conflict with the normal exploitation of a work. This requires consideration of whether this is such that 'uses, that in principle are covered by that right but exempted under the exception or limitation, enter into economic competition with the ways that rightholders normally extract economic value from that right to the work and thereby deprive them of significant or tangible commercial gains' (***United States—Section 110(5), §6.183***).

Regarding the addressees of the three-step test, **at least the second (no conflict with normal exploitation) and third step (no unreasonable prejudice to the legitimate interests of the rightholder) of the three-step test bind legislatures and courts alike** (***M Ficsor, Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms (WIPO:2026), 2nd edn, BC-9.14-BC-9.15 and BC-9.17***).

As Advocate General ('**AG**') Szpunar also noted in recent Opinions rendered in CJEU referrals, it is **not possible to envisage exceptions that deprive rightholders of the possibility to control uses of their protected content via licensing**: a 'risk of abuse' must be avoided when it comes to designing, interpreting, and applying exceptions (***Opinion of Advocate General Szpunar in Stichting de Thuiskopie, C-496/24, EU:C:2025:749, para 29***; ***Opinion of Advocate General Szpunar in Gândul Media Network, C-598/24, EU:C:2025:1002, paras 42-45***). Overall, when an exception has the potential to reduce the volume of sales or of other lawful transactions relating to protected content (ACI Adam, para 39) up

to the point that exempted uses enter into **economic competition** with non-exempted ones, then such a provision is incompatible with the second step of the three-step test (***United States—Section 110(5), §6.181***). It also fails the third prong of the three-step test analysis, in that it causes or has the potential to cause 'an unreasonable loss of income to the copyright owner' (***United States—Section 110(5), §6.229***).

The normal exploitation of a copyright work and/or protected subject-matter is one that the concerned rightholder can control, e.g., through licensing. The introduction, construction and/or application of an exception having the effect of depriving a rightholder of such a right breaches the three-step test and thus contravenes international and – where applicable – regional obligations.

1.2. Fair dealing

A substantial number of copyright defences in countries like the UK and the Commonwealth are framed within 'fair dealing'. In the UK, the ***CDPA*** does not define 'fair dealing', nor does it stipulate what factors need to be considered when assessing the fairness of an unauthorized dealing with a third-party work. The notion of 'fair dealing' has thus developed though case law from the perspective of a 'fair-minded and honest person' and has been traditionally considered a matter of degree and impression.

Several factors inform the decision whether a certain use of a work is fair, although the relative importance of each of them depends on the circumstances at hand. In ***Ashdown v Telegraph Group Ltd [2001] EWCA Civ 1142 (18 July 2001), para 70***, the Court of Appeal of England and Wales held that it is not possible to provide:

any hard-and-fast definition of what is fair dealing, for it is a matter of fact, degree and impression. However, by far the most important factor is whether the alleged fair dealing is in fact commercially competing with the proprietor's exploitation of the copyright work, a substitute for the probable purchase of authorised copies, and the like.… The second most important factor is whether the work has already been published or otherwise exposed to the public.… The third most important factor is the amount and importance of the work that has been taken. For, although it is permissible to take a substantial part of the work (if not, there could be no question of infringement in the first place), in some circumstances the taking of an excessive amount, or the taking of even a small amount if on a regular basis, would negative fair dealing.

From the above it is apparent that the notion of fair dealing **mirrors the requirements of the three-step test** (***England and Wales Cricket Board Ltd & Anor v Tixdaq Ltd & Anor [2016] EWHC 575 (Ch) (18 March 2016), paras 88-89***).

If the unauthorized use of a copyright work and/or protected subject-matter competes with that and is 'a substitute for the probable purchase of authorised copies', this weighs against a finding that the dealing at issue was fair.

1.3. Open-ended fair use doctrines (US, Singapore, South Korea)

The same considerations above at §1.1 and §1.2 apply in countries with open-ended doctrines like US fair use (***§107 US Copyright Act***). Under US law:

[…] In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include
(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.

The most recent US Supreme Court decision on fair use – ***Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023) ('Goldsmith')*** – reinforces the need for a holistic assessment. In all of this the relevance of the fourth factor – that is: **the effect of the use in question on the market for the original work** – is key. The fourth factor is regarded as the most important fair use factor (***Harper & Row v. Nation Enterprises, 471 US 539 (1985), at 566***). A merely potential substitution effect weighs against a finding of fair use (***Rogers v. Koons, 960 F.2d 301 (2d Cir. 1992)***).

As to **transformativeness** under the first factor, the central question is whether the use supersedes the plaintiff's work or rather adds something new, with a further purpose and character that must go beyond what is required to qualify as a derivative work: 'The larger the difference, the more likely the first factor weighs in favor of fair use.' (***Goldsmith, II.A***).

Consideration of whether the use at issue is **commercial** and is justified 'to promote the progress of science and the arts, without diminishing the **incentive to create**' (***Goldsmith, II.A***) are also necessary.

If the original work and secondary use share the same or highly similar purpose and the latter is commercial, this is likely to weigh against a finding of fair use.

Other countries also envisage open-ended fair use-style doctrines. Like the US, in those jurisdictions the assessment inter alia requires consideration of the harm caused by the use in question to the relevant rightholder.

For example, Singapore copyright law includes an open-ended fair use defence closely modelled upon the US doctrine. ***Section 191 of the Singapore Copyright Act 2021*** indicates that, in deciding whether a work or performance is fairly used, 'all relevant matters must be considered', including:

(a) the purpose and character of the use, including whether the use is of a commercial nature or is for non profit educational purposes;
(b) the nature of the work or performance;
(c) the amount and substantiality of the portion used in relation to the whole work or performance; and
(d) the effect of the use upon the potential market for, or value of, the work or performance.

Taking into account the first fair use factor (purpose and character of the use), the Court of Appeal of Singapore noted that 'the fact that the original and infringing works share the same purpose will tend to weigh against a finding of fair dealing' (***Global Yellow Pages Ltd v. Promedia Directories Pte Ltd and another matter [2017] SGCA 28 ('Global Yellow Pages'), para 78***). Similarly, having regard to the fourth factor (effect of the use on the potential market for the value of the copyright work), this requires a court to consider 'not only the extent of market harm caused by' the defendant's conduct, but also whether that, if 'unrestricted and widespread', would 'result in a substantially adverse impact on the potential market' for the original, taking into account **not only harm to the original but also harm to the market for derivative works** (***Global Yellow Pages, para 84***).

Turning to South Korea, in 2011 that country introduced a fair use provision (now, ***Article 35-5 of the South Korean Copyright Act***), also closely modelled upon the corresponding US doctrine, yet with some differences from US law, including the express reference in the provision (paragraph 1) to the requirements of the three-step test. Like the US provision, South Korean fair use lists four factors to determine whether the unlicensed use of a copyright work is to be considered fair. As it is discussed at §2.2 such factors were expressly reviewed in the context of unlicensed uses for AI training purposes in a recently released governmental guide, the conclusion being that **fair use would not apply to unlicensed AI training.**

> Within open-ended fair use-style doctrines, consideration of the effects on the market for the original work and its derivatives – and thus: the harm caused to the concerned rightholder – is a central consideration. A merely potential substitution effect weighs against a finding of fair use.

2
AI AND COPYRIGHT: CASE LAW AND POLICY

Having discussed the notion and relevance of harm in general copyright law at §1, this section discusses AI-specific case law in selected jurisdictions. Starting with Europe, at the time of writing the CJEU has yet to tackle the EU text and data mining (‘***TDM***’) exceptions. The Court is expected to do so when it decides the pending referrals in ***Like Company v Google, C-250/25*** and ***Manchester United Fanatics Klub v Google, C-806/26***. Further referrals are also said to be expected soon. Meanwhile, some national courts have decided on the applicability of their national transpositions to the unauthorized use of protected content and, recently, the notion of ‘harm’ featured in the analysis carried out by the Munich I Regional Court in ***GEMA v OpenAI (42 O 14139/24)*** and ***GEMA v Suno (42 O 763/25)***.

Similarly, in the US, several cases are in progress but, in those decided so far, consideration of the fourth factor in the fair use analysis (see above at §1.3) has been central. In other jurisdictions with open-ended fair use-style doctrines, the official guidance issued so far indicates that in several key instances rightholders’ permission is required.

2.1. Europe

As noted above, at the time of writing the CJEU decisions in ***Like Company v Google, C-250/25*** *and* ***Manchester United Fanatics Klub v Google, C-806/26*** are pending.

Meanwhile, across the EU Member States, courts have been issuing decisions regarding the interplay between genAI and copyright, particularly having regard to the availability of the relevant national provisions transposing the TDM exceptions found in ***Articles 3 and 4 of the EU DSM Directive*** and/or other defences to unlicensed AI training (see ***IFRRO AI Governance Guide, p 9***).

Of particular interest for the present discussion are the recent first instance decisions rendered by the Munich I Regional Court (Germany) in ***GEMA v OpenAI (42 O 14139/24***) and ***GEMA v Suno (42 O 763/25***). There, the Munich court inter alia considered the undue harm caused by the defendants' activities to the plaintiff's legitimate interests and concluded that the unauthorized use of GEMA's repertoire was an infringement of its rights:

- In 2025, in ***GEMA v OpenAI (42 O 14139/24***), the Munich court reasoned that unauthorized reproductions of protected content within the LLM (so-called 'memorization') would not be eligible for the application of exceptions, on consideration that such reproduction would unduly conflict with the exploitation of the protected content (pp 43-44; see here);

- In 2026, in ***GEMA v Suno (42 O 763/25***), the Munich court built on the reasoning developed in the earlier OpenAI decision and concluded that the unauthorized use of GEMA's repertoire to train the defendant's LLM was an infringement of its rights (see ***here***). Available US case law on genAI and copyright (see below at §2.2) was also referred to in detail (pp 116 ff).

As regards the UK text and data analysis defence (***section 29A CDPA***), which was adopted in 2014, this provision remains unapplied in case law as of today. Following a public consultation that ran between late 2024 and early 2025, in 2026 the Starmer Labour Government ***announced*** that no reforms to copyright law would be introduced for the time being, due to the lack of evidence of the economic benefits (if any) that a broader system of exceptions would bring to the UK (see ***IFRRO AI Governance Guide, p 10-11*** for background information).

In the decisions issued so far, some courts across the EU have inter alia considered whether unlicensed LLM training would cause undue harm to the legitimate interests of the concerned rightholder: where that was the case, no exception found application. On a policy level, in the UK, the Starmer Government concluded in 2026 that the benefits that a more permissive copyright system would bring to that country's economy remain undemonstrated.

2.2. Open-ended fair use-style doctrines

Starting with US practice, in the first case decided on unlicensed (non-generative) AI training, the conclusion of the US District Court for the District of Delaware was that the defendant's conduct did not qualify as fair use (***Thomson Reuters v. Ross Intelligence, No. 1:20-CV-613-SB (D. Del. Feb. 11, 2025***); appeal in progress). Regarding Section 107, the court held that the first factor would weigh against a finding of fair use, given that the defendant's use was **commercial and not transformative**.

Transformativeness is about the purpose of the use: in that case, the purpose of the defendant was the same as the plaintiff's, hence non-transformative. Furthermore, the copying done by the defendant was not necessary for it to innovate. As to the fourth fair use factor, the court found that it also weighed against the defendant, given that its product was meant to be a market substitute for the plaintiff's, even though just potentially. ***The US Court of Appeals for the Third Circuit affirmed the summary judgment in favour of the plaintiff in September 2026 (Thomson Reuters Enterprise Centre GmbH v. ROSS Intelligence Inc. (No. 25-2153)), inter alia noting that "the evidence shows that the market for licensing headnotes as text to train AI is rapidly developing***".

In the 2025 order issued in ***Richard Kadrey, et al. v. Meta Platforms, Inc., No. 23-cv-03417-VC (N. Cal. Jun. 25, 2025***), Judge Chhabria granted summary judgment to Meta on the plaintiffs' claim that the company had infringed copyright by training its models with their books, on consideration that the plaintiffs had made the wrong argument and failed to develop a record in support of the right case. That said, the judge held that 'i**n most cases' the unlicensed use of protected content for training purposes would be illegal,** also considering that it is 'ridiculous' to claim that such companies cannot 'figure out a way to compensate copyright holders' for the use of their content, if this is required for training purposes.

The Kadrey judge also criticized the earlier order issued by Judge Alsup in ***Andrea Bartz, et al., v. Anthropic, No. C 24-05417 WHA (N. Cal. Jun. 23, 2025***), especially that he had appeared to overlook the **substantial displacement effects of AI-generated content flooding the market and the reduction of incentives to create in the future, including through the use of protected content illegally made available by piracy-focused websites**. The Bartz litigation was eventually settled: in July 2026, the US District Court for the Northern District of California approved the proposed settlement in the class action, with ***Anthropic agreeing to pay USD 1.5 billion*** to members of the class.

In other countries with open-ended fair use-style doctrines, governments have issued guidance on copyright and AI, stressing the importance of preventing undue harm to authors and rightholders. For example:

- In **Singapore**, the Ministry of Law and the Intellectual Property Office of Singapore confirmed in 2024 that the requirement of 'lawful access', which inter alia informs the fair use analysis, would not be fulfilled if access to a copyright work was gained by **circumventing technological measures** which control access thereto (***Ministry of Law and Intellectual Property Office of Singapore, Summary of Key Changes to Prescribed Exceptions in part 6, Division 1 of the Copyright Regulations 2021 (19 December 2024), §10***).

- In **South Korea**, the Guide on Generative AI and Copyright prepared by the South Korean Ministry of Culture, Sports and Tourism is equally telling. With regard for example to web scraping for the purpose of creating datasets to be subsequently employed in AI training processes, the conclusion is that such an activity might be infringing under copyright law if undertaken without a licence (***Ministry of Culture, Sports and Tourism and Korea Copyright Commission, A Guide on Generative AI and Copyright (15 April 2024), p 10***). The Guide further highlights how the applicability of the national fair use doctrine to unlicensed AI training remains a matter of contention among commentators. Because of this, it recommends 'to prevent possible disputes by **securing authorization** from the rights holder prior to use' (pp 16-17).

If the source of the content used is unlawful, the use at hand is non-transformative and/or such as to even merely potentially compete on the market for the original content, no fair use-style doctrine is likely to find application, with the result that the unauthorized use in question will be held infringing.



3
MARKET IMPACT OF GENAI

Having reviewed the notion and role of 'harm' in general copyright law (§1) and with specific regard to the emerging case law and policy guidance on copyright and AI (§2) and having found that 'harm' plays a key role in the determination of whether a certain conduct is ultimately infringing, this section turns to the market impact of genAI.

Specifically, it intends to identify the types of perceived harm caused by this phenomenon insofar as authors and rightholders are concerned, before discussing potential solutions to remove or reduce the extent of such harm (§3.3). To this end, the section first considers existing market studies and reports on genAI and the creative sector (§3.1). It subsequently analyzes and presents for the first time the results of a survey conducted among IFRRO members (§3.2).

3.1. Existing market studies

The development and deployment of AI are becoming increasingly significant. Several studies have examined the impact of both phenomena on the creative sectors, including those reported below.

Starting with the **music and audiovisual** industries, the ***PMP Strategy/CISAC study on the economic impact of AI in music and audiovisual industries*** (November 2024) finds that the market size of AI-generated outputs is due to be worth a cumulative EUR 40 billion, rising to an annual value of EUR 16 billion, in 2028. By that time, it is also expected that genAI music will account for around 20% of music streaming platforms' revenues and around 60% of music libraries revenues. In turn, under the conditions existing at the time when the analysis was performed, the market penetration by genAI outputs could put 24% of music creators' revenues at risk in 2028, with all this representing a cumulative loss of EUR 10 billion, and an annual loss of EUR 4 billion in 2028. Vice versa, genAI services in music (both mass public and professional tools/software) are projected to generate exponential revenue growth, reaching an estimated EUR 4 billion in 2028, with a cumulative total of EUR 8 billion.

Still in the **music** sector, the 2024 study commissioned by GEMA and SACEM on ***AI and music – Generative Artificial Intelligence in the music sector*** reveals that, while one third of the surveyed members (15,000) uses AI, 64% of them are sceptical regarding its use in the creative process. AI is also found to represent an economic risk, with approximately EUR 950 million in copyright royalties at risk in Germany and France in 2028. The near totality of the surveyed creators (90 to 95%) consider that consent, transparency and remuneration are key concerns.

Turning to **publishing**, a 2025 empirical study produced by the Minderoo Centre for Technology and Democracy at the University of Cambridge on the ***Impact of Generative AI on the Novel*** finds not only that two-thirds of the surveyed published novelists (258) in the UK know that their works have been used without permission to train AI systems, but over a third of them feels that their income has been already negatively affected by genAI and over 51% also consider that AI is likely to replace their work as fiction writers. The authors who are considered the most vulnerable are said to be genre authors, with two-thirds (66%) of all those surveyed listing romance authors as 'extremely threatened', followed closely by writers of thrillers (61%) and crime (60%). In all of this the surveyed authors feel that copyright laws are not respected or enforced and that the UK government should do more, also having regard to transparency obligations (see ***IFRRO AI Governance Guide, p 10-11*** for background information regarding the UK policy discussion and above at §2.1).

Still in the UK publishing sector, a 2026 study conducted by the Publishers Association – ***Content Superpower: UK publishing and the AI licensing market*** – provides the first comprehensive account of how books and journal publishers license content for use in AI. The report shows that the AI licensing market is established and expanding, with UK publishers' high-quality content in demand to power AI innovation and scientific discoveries.

As genAI continues growing, there is a perceived, concrete risk of and actual harm being caused to the creative sectors and individual creators alike. Lack of consent to the use of protected content, remuneration and transparency are indicated as causing widespread concern. At the same time, a licensing market is a reality and continues expanding, at least in certain sectors and markets.

3.2 IFRRO members' survey 2026

Between 25 June and 24 July 2026 IFRRO ran its own survey in order to gather feedback from its members around the world on the size and types of impact caused by genAI on authors and rightholders, confidence in the existing legal framework, the role of licensing, and the value of human-created content as opposed to AI-generated outputs. The survey focused specifically on the market impact of AI on text and image-based works. It consisted of a mix of closed and open questions clustered around the following issues/questions:





Impact on earnings: 'Over the past few years, GenAI has directly and negatively impacted authors', publishers' and other rightholders' earnings': to what extent do you agree with this statement?



Displacement effects: 'I am concerned that AI will ultimately displace creative workers': to what extent do you agree with this statement?



Confidence in the law: 'I feel that the law as it is doesn't protect authors, publishers and other rightholders adequately against unauthorized use of their works by AI developers': to what extent do you agree with this statement?



Licensing: 'The rise of AI-specific licences will allow authors, publishers and other rightholders to greatly improve their economic situation': to what extent do you agree with this statement?



Value of human-generated content: 'I think that human-generated content will be ultimately and always preferred to AI-generated content': to what extent do you agree with this statement?

The survey attracted 1,993 responses, with the vast majority of respondents identifying as authors (81%), followed by publishers (9%), collective management organizations ('**CMOs**') (2%), and other stakeholders (8%). In terms of geographic provenance, the survey received responses from all continents. That said, the USA and the UK together made up over 67% of respondents; Germany (7+%) and Canada (5+%) followed in third and fourth place, respectively.

a - Impact on earnings

Regarding the statement 'Over the past few years, GenAI has directly and negatively impacted authors', publishers' and other rightholders' earnings', **more than 9 respondents out of 10 strongly agreed or agreed with it.**

1,301 respondents elaborated further on the reasons for their responses, with a significant portion of them providing examples of concrete economic harm, including:

- **Unauthorized use of content for AI training purposes**, whether it is for initial training, fine-turning, continued pre-training, RAG, etc (which the vast majority highlighted),

- **Flooding of the market with AI-generated content ('AI slop')**, and the

- **Resulting economic losses and missed professional opportunities (layoffs, lost clients, etc)**.

Starting with **unauthorized AI training**, several respondents highlighted how the lack of consent and remuneration for the use of their content is a source of economic harm:

We are aware that our books were used to train GenAI without compensation. We are also aware of pirated editions of some of our authors' works, apparently created with AI, being available in retail channels […]

Over 30 of my books are on the LibGen dataset […] This happened without my consent and without compensation.

Several respondents noted that the advent of AI-generated outputs has also caused **other kinds of economic harm**, ranging from layoffs to declining and lost sales and revenues:

My self-publish sales have fallen by more than half; I've been unable to find a publisher or even agent for my works despite being highly published.

I work in video game translation and clients, especially large agencies (LSPs), have forced their translators to use AI and accept lower rates or other strange things (fuzzy grids, «dynamic pricing») or not receive work anymore. Many depend on the income and accept such conditions, but it threw the whole industry into a downward spiral (rates are getting lower every year). There's also a smaller development towards more ethical conditions within collectives and boutique agencies, but as far as the big players are concerned I can only agree to that initial statement [that is: Over the past few years, GenAI has directly and negatively impacted authors', publishers' and other rightholders' earnings].

Stock photo and vector sales have plummeted. The categories that dropped synced with what AI manipulation was available at the time. (ie, vectors didn't drop until ai could make usable vectors).

As a freelance copyeditor and transcriber much of my scope of work is now done by GenAI therefore causing loss of income.

I was a copywriter and editor at a non-profit organization. I was laid off in 2025 due to budget constraints. Since then, I've spoken with former colleagues who told me that they are now using ChatGPT to do my former job, meaning I was replaced by AI. I have been unable to find full-time employment since.
I have friends here in the San Francisco Bay area who are being asked to train AI to do

their jobs. Once AI has learned how to do their jobs, presumably the human workers will not be needed and will be laid off.

Several respondents cited **AI slop** as hurting human-generated content, its discoverability, and overall profitability. The abundance of AI-generated outputs, especially on certain marketplaces, risks making it harder to find human-created works:

GenAI was trained on authors' books without compensation; GenAI can now mimic the style of writing that authors are well-known for; the amount of AI-generated books flooding the marketplace are drowning out books written by humans (making it difficult for consumers to find human-created content amongst all the AI slop).

I am an artist. The exponential rise of AI-generated imagery has flooded the internet. [P]eople get accustomed to braindead ai-slop. [T]he visual representation of REAL art has become increasingly difficult. [T]his has a direct effect on sales.

We've seen our ebook revenue greatly decrease as the market if flooded with instant GenAI books, we've watched GenAI influence media in multiple ways, reducing discoverability with lists filled with imaginary books.

Several respondents further highlighted that **suspicion of AI use** is increasing, oftentimes leading to wrongful accusations if not, as some respondents put it, a 'witch hunt'. All of this, in turn, causes reputational and economic damage:

Genuine authors are constantly being accused of having had recourse to AI, and for the most spurious of reasons: they used semicolons; they used em dashes; they happened to invoke the rule of three; etc. Not to mention the fact that a sizeable portion of the readership appears perfectly content to read AI slop if it's cheaper than human-generated content.

Because of the negative attitude associated with GenAI, it has now become a witch hunt against all possible users of GenAI. BUT this is complicated by the fact that one is unable to properly detect GenAI. So, any writer can now be accused of using GenAI (even if they aren't) and be attacked for it. It's sewing fear and uncertainty within the industry in a big way.

A combined 92% of respondents strongly agrees or agrees that genAI has directly and negatively impacted authors', publishers' and other rightholders' earnings. The types of harm caused include use of protected content for AI training purposes broadly intended without consent and remuneration, flooding of the market with AI-generated content (AI slop), layoffs, ***reduced*** and lost revenues, undue suspicions of AI use.

b - Displacement effects

Turning to the statement 'I am concerned that AI will ultimately displace creative workers', **more than 3 respondents out of 4 strongly agreed or agreed with it**.

1,222 respondents elaborated further on the reason for their position. Most of the received comments outlined how displacement effects caused by AI are already visible and linked to the types of economic harm discussed above at §3.2.a:

Human art has a soul and computer generated products are shallow. But the greatly reduced labor costs for computer generated products incentivizes buyers.

In all of this, a substantial number of respondents emphasized once more that the flooding of the market with AI slop impacts the discoverability of human content and poses a displacement risk, by making it harder to locate quality human-produced content:

Gresham's Law (or the popular restatement thereof, that a glut of garbage drowns out the good stuff, and thus the drive to produce the good stuff). Look at the amount of AI slop on Amazon books, making it near impossible to discover actual self-pub books unless you know the title and author.

It is reported that, while ***several tech companies are committed to identifying and removing AI slop themselves***, ***some of the major platforms*** do not appear to undertake sufficient efforts in this sense.

77% of respondents strongly agree or agree that genAI will displace creative workers, and refer to the types of harm discussed in the previous sub-section to corroborate their views.

c - Confidence in the law

Regarding the statement 'I feel that the law as it is doesn't protect authors, publishers and other rightholders adequately against unauthorized use of their works by AI developers', **an overwhelming majority of respondents (close to 10 out of 10) strongly agreed (76%) or agreed (20%) with it**.

1,030 respondents elaborated further on the reason for their position. Among the criticisms raised by respondents, three in particular stand out:

i) Perceived lack of laws and policy initiatives designed to address the specific issues raised by genAI, including lack of a suitable international level playing field to protect authors and rightholders in the wake of genAI:

Current copyright rules do not provide sufficient transparency regarding which works are used for AI training, nor effective mechanisms for licensing, remuneration, opt-out and enforcement.

Current legal frameworks were not designed for large-scale AI training and leave significant uncertainty regarding the use of copyrighted works in AI development."
Big tech companies have harvested and stolen our work and our [UK, ndr] Government is absolutely unbothered and unwilling to protect our copyright. The feeble options they

have suggested create maximum problems for authors with minimal if any protection and no long term strategy.

There must be international laws to protect us, and they need to be put in place FAST.

ii) Perceived lack of adequate enforcement and sanctions within existing legal regimes:

Copyright law does protect creators against the use of their work, but AI companies are stealing with impunity just the same. The laws need to be enforced.

The fact that it seems these AI companies are still thieving. The penalties are like traffic tickets to them.

There is nothing, currently, to stop an LLM developer from factoring in compensation payments as a cost of doing business and going ahead and scraping databases/the internet for training data. There needs to be a paper trail and a penalty that has genuine impact.

iii) Perceived interpretation of existing laws in favour of genAI developers to the undue detriment of copyright protection. In this regard, several respondents feared potential shortcomings with the construction of the rights reservation possibility afforded under ***Article 4(3) of the EU DSM Directive***, the transparency obligations under ***Article 53(1)(d) of the EU AI Act*** and fair use under ***§107 U.S. Copyright Act***:

The [EU DSM Directive] Art. 4(3) TDM exception reverses the logic of copyright: silence means consent, and rights holders must opt out work by work, site by site — with no agreed machine-readable standard and no way to verify compliance. Our Cassandre works were ingested before any opt-out existed, and no law provides remuneration or retroactive remedy. AI Act Art. [53(1)(d)] requires only a «sufficiently detailed summary» of training data, not work-level disclosure, making infringement unprovable in practice. Enforcement costs fall entirely on estates; providers bear none of the burden of proof.

AI developers are working hard to enlarge the loophole created by [US] «fair use», aiming to create a legal basis for their theft of copyrighted work. The time and cost of filing infringement claims against corporate behemoths is outside the ability of most working authors.

An overwhelming majority of respondents (96%) does not consider the current situation adequate. Among the criticisms raised, respondents refer to the perceived: (i) lack of laws and policy initiatives designed to address the specific issues raised by genAI and adequately protect authors and rightholders, including at the international level; (ii) lack of satisfactory enforcement and sanctions within existing legal systems; (iii) risk of undue interpretation of existing laws in favour of genAI developers.

d - Licensing

Regarding the statement 'The rise of AI-specific licences will allow authors, publishers and other rightholders to greatly improve their economic situation', **more than 1 respondent out of 2 strongly agreed or agreed with it**.

970 respondents provided comments justifying their position. The majority of responses supported AI-specific licences, and stressed the need for **careful drafting**, so to ensure that licensing terms favour authors and rightholders and may be meaningfully enforced. Respondents also stressed the need to ensure their **forward-looking** character in order to reduce the harm discussed above at §3.2.a and §3.2.b and that **individual authors and smaller rightholders also benefit** from a consent-based approach:

AI-specific licences could become an important source of remuneration, provided that they are based on transparency, fair tariffs, collective licensing mechanisms and effective enforcement. Without clear obligations for AI developers, such licences may remain voluntary and insufficient to compensate rightholders.

[…] Everything must be opt-in and highly enforceable […]

A new kind of licence will benefit those with large catalogues, not individual authors. The music industry's experience with streaming royalties serves as a salutary lesson. Some people made billions, but it was not the small rightsholder.

At best this is a bandaid one-time solution offered to artists to make up for the large scale theft of their work. Once the models are trained, there will be no further need to include artists, or to pay them for their creative output.

More than 50% of respondents strongly agree or agree that licensing will greatly improve the situation of authors and rightholders. Many warrant that such licences require careful drafting, enforceability of terms, and a forward-looking character.

e - Value of human-generated content

Regarding the statement 'I think that human-generated content will be ultimately and always preferred to AI-generated content", **more than 3 respondents out of 4 agreed or strongly agreed with it.**

1,079 respondents elaborated further on the reasons for their responses. While most highlighted the value of human-created content, some considered that to several **users and consumers** the origin – human or artificial – of the content they consume might not make a substantial difference:

Most people genuinely can't tell the difference, or care.

There are clients who do not care about the source so long as income or content is generated.

Several respondents considered that AI-generated content is regarded as having lower value than human-created works, but also feared that it would become **increasingly hard to distinguish** between human- and AI-generated content without

suitable transparency obligations on the side of genAI deployers:

At the moment I think this is true, because AI generated content is easy to spot - but this is getting harder, and there will soon come a time (perhaps it's already here) when we can't tell. But in principle, I think most people would favour human created content over AI, and I would be strongly in favour of a law that made «creators» declare whether or not AI had been used as a basic consumer right.

Most readers cannot tell the difference between human- and AI-generated content now; that ability will atrophy further in the future.

As long as there's no duty to mark Gen A[I] how is the customer supposed to know? I guess the situation would be better if there was a label.

As AI capabilities improve, I'm sure there will be good and bad AI content, just as there is now good and bad human-generated content. Disclosure is the only way forward though, so consumers know how the work they love was created [...]

People have told me how they hate finding out that they watched an AI-generated YouTube post & that they feel stupid/tricked. They worry that they might be tricked into buying books that are AI-generated when what they want is REAL humans, not machines, writing what they read. What's the point of reading at all if it's fake? That's one reason I'm forming my own publishing company with strict no-AI generated requirements.

As the parent of Gen Z/Gen Alpha children, I have a front row seat to this. They are incredibly savvy at detecting AI-generated «creative» material. They find it cringy, laughable, and they avoid it. AI companies are run by individuals who have very little understanding of everyday people, who have no understanding of what art and creative output means to the everyday person, and therefore will be VERY slow to realize this. As of right now they are flummoxed by the pushback. I am more optimistic about this than I used to be.

Furthermore, several respondents noted that **price and convenience** of AI-generated outputs could ultimately drive consumers away from human-generated content, despite the preference for the latter in principle, and even turn the market for human-generated content into a 'niche' one:

I suspect that a small fraction of educated, principled, and discerning readers will prefer human-generated content as a philosophical matter. But when the quality of AI-generated content approaches that of human-authored content, and can be consumed at a fraction of the price, I don't think most readers will stand on principle […]

In the commercial field, there is already an estimated 70 percent of [AI] generated, cheap slop out there (film, print, illustration in Germany), and most people will get used to the looks of it, as it will improve. I think human generated content will become or remain a thing for a handful of rich [connoisseurs], a status symbol. And hopefully it will still play a role in the education system.

I strongly agree with this on a personal level, but I actually don't know if this is true on a societal level. The likely truth is that AI-generated content will get better and less distinguishable from human content, and most consumers won't know or care about the difference. Human-generated content will likely be more of a niche category—it won't disappear, but it will be diminished.

76% of respondents strongly agree or agree that human-generated content will be ultimately and always preferred to AI-generated content. In their comments, respondents highlight the need for consumer education and the imposition of meaningful labelling obligations on the side of AI deployers.

3.3. IMPORTANCE OF CONSENT AND A FAIR POLICY AND LEGAL ENVIRONMENT

As it is also explained in the ***IFRRO AI Governance Guide***, the current legal landscape around the world is such that **no exception/open ended, fair use-style doctrine fully covers LLM development and deployment in every instance**. As a result, relevant rightholders' **consent is required by law** to use their copyright works and/or other protected subject-matter for training purposes broadly intended (including initial training, fine-turning, continued pre-training, RAG, etc).

For rightholders and AI developers, **a licensing approach is thus both necessary and practical** as it is through licensing that concerned parties are provided certainty regarding their rights and responsibilities with respect to the use of protected works and subject-matter for training. As the discussion at §3.1 has also noted, a licensing market for AI training already exists and continues to evolve. The ***IFRRO AI webpage*** showcases licensing initiatives already developed by IFRRO members. Further examples can be found across different creative sectors and countries (see ***Generative AI Licensing Agreement Tracker, Ithaka S+R***, as well as the AI Licensing Deals listed ***here***, and ***AI Licensing by AI Companies***).

Collective rights management also plays an increasingly key part, aligned with the role that collective licences have consistently had throughout history in helping overcome the challenges posed by the advent of new technologies. AI-specific collective licences have been developed by several CMOs around the world, including for example:

- **USA** (***CCC Collective AI License***),
- **UK** (***CLA Generative AI Licence***),
- **Sweden** (***STIM AI License for Music***),
- **Germany** (***PLAY by GEMA***).

Furthermore, **CMOs themselves have concluded agreements** for the use of repertoires they administer in the context of AI training. One such example is Norway, where Kopinor has signed an ***agreement*** on the use of copyright-protected material for the training of Norwegian language models.

The legal environment should also be such that a fair balance is struck between the protection of copyright and related rights and innovation and technological advancement. In this sense, provisions like those contained in ***Article 4(3) of the EU DSM Directive*** regarding rights reservation, ***Article 53(1)(d) of the EU AI Act*** concerning transparency obligations on the side of certain AI developers, and open-ended fair use doctrines like ***§107 of the US Copyright Act*** must be interpreted in accordance with their rationale.

In addition, policy and legislative initiatives adopted in a certain jurisdiction may be unsuitable altogether, or unsuitable in the context of other legal and economic realities: for example, the EU approach in ***Article 4(3) of the EU DSM Directive*** has been considered critically in inter alia ***United States Copyright Office, Copyright and Artificial Intelligence – Part 3: Generative AI Training (Pre-publication Version) (May 2025), pp 101-106*** and ***Department for Promotion of Industry and Internal Trade – Ministry of Commerce & Industry – Government of India, Working Paper on Generative AI and Copyright – Part 1: ONE NATION ONE LICENSE ONE PAYMENT – Balancing AI Innovation and Copyright (December 2025)***.

Licensing solutions exist and are continuously developing, also to address the potential medium- and long-term impact of genAI on inter alia creative sectors and individual creators, and ensure that authors and rightholders are fairly remunerated for the use of the protected content they consent to.

In all of this, existing laws must be interpreted and applied consistently with their intended rationale. On a policy and legislative level, it is key to ensure that meaningful transparency obligations are in place, both having regard to training data and labelling of AI-generated outputs. This is necessary not only to allow rightholders to take enforcement initiatives, but also to ensure that the broader public is in a position to discern and distinguish between human-created content and AI-generated outputs. It is also important to ensure that, before any reform is undertaken, available options and their potential impact are carefully assessed.



4
CONCLUSIONS AND RECOMMENDATIONS

This IFRRO study has focused on the notion of 'harm', whether as part of the legal analysis required under copyright, with regard to policy considerations, or by considering the market impact of genAI.

The legal and policy analysis has identified the key moment when courts and legislatures are required to assess whether an undue harm is caused to authors and rightholders: it is when an exception to copyright and related rights – whether from a closed catalogue or in the form of an open-ended, fair use-style provisions – is considered, either for potential application in a specific case or introduction into a certain jurisdiction's own legal system.

On a judicial and legislative level, the analysis mandated under the international and regional three-step test, fair dealing, and fair use requires considering whether a certain exception would cause an undue prejudice to the author or rightholder. If that is the case, the activity in question will be regarded as an infringement of that author's and/or rightholder's own rights, with the result that no defence shall be available. Similarly, when a proposed new exception to copyright and related rights unduly compresses copyright protection, such an exception should not be considered for adoption on both a policy and legislative level.

Insofar as AI training (broadly intended) is concerned, the legal analysis has recalled that there is no exception (whether from a closed catalogue or open-ended doctrine) to copyright and related rights that covers every stage of this process in all instances. In any event, both closed catalogue exceptions and open-ended fair use doctrines are premised within a requirement of lawful access to the protected content in question and are framed within the conditions of the three-step test and, where applicable, fair dealing and fair use.

In turn, the prior consent of relevant rightholders is required to undertake the use of their protected content.

In terms of **market impact**, genAI is expected to continue growing across most sectors. In all of this, existing studies consistently show that genAI is also generating measurable, and in some sectors already quantified, economic and commercial harm to authors and rightholders. At the same time, the market for licences is an established growing commercial reality, at least in certain sectors and markets.

A licensing approach is legally necessary and contributes to reducing the negative impact that genAI has been having on several authors and rightholders in various forms, as the results of the IFRRO members' survey also show.

An overwhelming majority of respondents to the **IFRRO members' survey** agree that genAI has already negatively impacted their earnings and consider that the law as it stands does not adequately protect them against the unauthorized use of their protected content. The majority is also concerned that AI will cause harmful effects of different kinds. A licensing approach is favoured. While the majority of respondents also believe that human-generated content will be preferred to AI-generated content, preference can only operate where consumers are able to distinguish human- from AI-generated content, which respondents consider problematic without meaningful transparency (labelling) obligations on the side of genAI deployers.

Consent and appropriate licences, alongside effective enforcement of copyright and related rights and meaningful transparency obligations – both regarding the training data and the labelling of outputs – are all elements needed to ensure a 'high level of protection' of copyright and related rights. They also serve to guarantee the 'fair balance' mandate informing international copyright law and which the rapid rise of genAI appears to have unsettled.

Situations in which large-scale, unauthorized uses of protected content proceeds without consent, remuneration, and/or transparency is neither legally allowed nor economically sustainable, and is directly responsible for the current erosion of trust also reflected throughout existing market studies and the 2026 IFRRO members' survey alike.

GenAI can only advance in a way that is respectful of authors' and rightholders' rights if:

· Authors and rightholders are in a position to control and meaningfully consent to the use of their content, according to modalities that they should be in a position to define and negotiate.

· Policy- and law-makers, alongside courts, uphold the principles and rationale governing copyright law and avoid that undue harm is caused to authors and rightholders, conforming to international obligations and relevant regional and national provisions alike.

· Robust transparency obligations, both having regard to the training and output generation phases, are introduced and enforced.



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