Consultation on the White Paper on Artificial Intelligence - A European Approach

IMPALA, the European Association of Independent Music Companies, welcomes the opportunity provided by the consultation on the European Commission's White Paper on artificial intelligence to share its initial views on the question of AI.

IMPALA represents almost 5,000 independent music companies across Europe. Accounting for over 80% of all music releases, we believe it is important for our members' views to be heard in this debate.

As we are looking at the question of AI from the perspective of our members, SME music copyright holders, we are particularly interested in the issues arising at the intersection of AI and copyright as well as the question of AI-powered algorithms used by online music services to recommend music to users.

The White Paper defines "AI (as) a collection of technologies that combine data, algorithms and computing power". We agree with this broad definition and would caution against the temptation to define AI as the ability for a computer programme to think or create "on its own" without any human input, as the terms "artificial intelligence" or "AI generated" can be misleading.

There is already a long history of AI being used in music. In 1951, the first computer generated music was created by British mathematician Alan Turing, and the first computer-assisted music score dates back to 1957 with "Illiac suite for string quartet".

More recently, notable uses of modern AI technology in music include Holly Herndon's Proto album (released on independent label 4AD) in which the artist "collaborated" with an AI named Spawn co-created by Herndon and Mat Dryhurst; or YACHT's Chain Tripping album (released on independent label DFA Records), for which the Los Angeles based band trained a machine learning system on their entire catalogue of music. These are only two of many recent examples of AI being used to assist in the creation of music.

Whole services such as cloud-based platform Amper are designed to help users create music via algorithms based on AI.

As mentioned above, the terms "Artificial Intelligence" and "AI-generated" can be misleading, as in the case of music for example AI doesn't generally produce songs from start to finish. It generates ideas based on parameters set by a human, and these ideas are then incorporated into a work after being adjusted, structured and mixed also by a human.

AI and machine learning programmes are generally used as an extension of an artist or producer's skills and as a means to shorten the time it takes to perform tasks which can be automated.

The value of human creativity should not be lost in this discussion on the role and development of AI, but rather given prominence.

The use of AI to assist with the creation of music raises a number of issues, which we would like to touch on here.

Use of copyright protected works to "feed" and "train" AI (input)

It is often said that AI can be "trained". In the case of music, this effectively means that a machine learning programme will be "fed" a number of songs, rhythms, lyrics, patterns which form a body of information known as the "training set". The AI will then "mine" this training set and generate new works based on what it has learned from it. To be able to feed these works for an AI to mine, the works first have to be copied.

Text and data mining of copyright protected works to feed AI falls within the scope of the 2019 Copyright Directive and specifically its text and data mining provisions:

-Either under Article 3 of the Directive in the case of text and data mining by research organisations and cultural heritage institutions of works to which they have lawful access for the non-commercial purpose of scientific research.

-Or under Article 4 of the Directive for text and data mining of lawfully accessible works. Here, rightsholders can decide that the exception for text and data mining applies to their protected works or choose to reserve their rights and ask for licences for text and data mining of their works.

Proper implementation of this provision is crucial to make sure that creators' revenues are protected and that rightsholders can pursue licensing options for the use of their works for text and data mining that would allow for the functioning of AI.

For other copyright acts that feed into AI systems whether by reproduction or other uses, current copyright rules apply of course relying on rightsholders' exclusive rights which continue to apply.

We would caution against the temptation to introduce new general exceptions for the use of copyright protected works to train AI applications. The fact that AI exists and should be developed doesn't mean that any type of works should be treated as data that can be used for training AI without having to ask for authorisation to copy those works. It's also important to note that licensing solutions exist that can allow using copyright protected works for AI purposes.

The copyright status of a work created using AI (output)

As mentioned above, AI is already commonly used in the music sector to assist with the creation of works. In those cases, there is no question that a work created with the assistance of AI should receive the same copyright protection as a work created without AI. AI is just another tool at the disposal of creators, just like musical instruments, samplers, computers, etc.

It's also interesting to note that just like human made covers or copies of copyright protected works can be found to infringe copyright, so can AI-assisted covers or copies of works. The fact that a work has been partly or wholly created by a machine or software doesn't mean that parts of an existing work are not reproduced without authorisation on this new work, and hence constitute a copyright infringement.

AI powered algorithms

Another AI related question of importance to our members, independent music companies, is how AI powered algorithms are used to recommend music to users of streaming services or online content sharing service providers (as defined by the 2019 copyright directive) such as YouTube.

These questions will also be relevant in the context of the European Commission's upcoming work on a Digital Services Act.

First, it is important to bear in mind that the high level of concentration in the music sector has a detrimental effect on music SMEs which face severe problems in terms of market access. The impact on diversity, consumer choice and pluralism is clear.

The music sector is extremely concentrated, with thousands of independent music companies in competition with 3 major companies which together account for 70-80% of the market - figures go up to 95% in the top 100 airplay and streaming charts in certain countries - and Anglo-American repertoire dominating the charts across Europe. It is therefore crucial for our members that the music market remains as open and competitive as possible.

With its limitless "shelf-space", the internet represents in theory a golden opportunity for cultural diversity to flourish in the digital age. However, despite the ease with which new works can be published online, being found amongst the millions of available tracks is extremely difficult.

Algorithms used to recommend music play a key role here, as they can make or break a song or an artist. AI powered algorithms that organise playlists and provide recommendations on what music to listen to next, are the main routes to consuming and discovering music in the music market today, which is skewed to a significant extent in favour of major repertoire, in particular as regards global playlists, despite independents accounting for over 80% of new releases.

It is therefore imperative that digital services are subject to rules that guarantee the visibility of a diverse range of culture. Ensuring the findability of content online is one of the main issues in maintaining diversity. This applies to algorithms, which are today constantly used to recommend music.

Algorithms should be used based on fair, reasonable, transparent and non-discriminatory terms to prevent discrimination between large and small repertoire owners and promote cultural diversity.

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