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NOTE

From:	Presidency
To:	Delegations
Subject:	Policy questionnaire regarding lessons learned on Article 15 of the CDSM Directive and on fostering a well-functioning framework for licensing in the age of AI

Delegations will find attached, as **Annex I**, a Presidency policy questionnaire regarding lessons learned on Article 15 of the CDSM Directive and on fostering a well-functioning framework for licensing in the age of AI. The questionnaire will be presented at the Copyright Working Party meeting of 1 July 2025, in view of discussion of this topic at this and future meetings.

Annex II contains questions addressed to stakeholders. It is attached for delegations' convenience and is aimed at facilitating the process of consulting stakeholders and referencing their input. If stakeholders are consulted, please provide their information by referring to the numbering of questions as provided in Annex II.

Please note that questions 1–7 (23–29 in the stakeholders' section) concerning the new related right for press publishers and Article 15 are to be discussed at the Working Party meeting on the **25 September 2025** and written answers would be appreciated by **1 October 2025**.

Questions 8–22 (and 30–42) concerning AI and copyright are to be discussed at the Working Party meeting on the **14 October 2025** and written answers would be appreciated by **20 October 2025**.

Delegations are kindly asked to send their written answers to intellectualproperty@consilium.europa.eu.

ANNEX I

POLICY QUESTIONNAIRE REGARDING LESSONS LEARNED ON ARTICLE 15 OF THE CDSM DIRECTIVE AND ON FOSTERING A WELL-FUNCTIONING FRAMEWORK FOR LICENSING IN THE AGE OF AI

Introduction

Generative AI and its impact on copyright are evolving at a very fast pace. Artificial intelligence does not produce its output from scratch, but from data – whether text, images or music – and much of the data is protected by copyright and related rights. AI-technologies represent new forms of innovation and transformation of industries – including the creative industries – but they also create tension with the interests of copyright holders. In this context, such technologies must act in consistency with applicable copyright laws. It is essential to have the right balance and a copyright framework which ensures proper remuneration for creators and the creative industries, while allowing AI developers of all sizes to have competitive access to high-quality data. This can be facilitated by simple and effective mechanisms that enable copyright holders to reserve their rights and the use of their content, as per Article 4(3) of the CDSM Directive[1], as well as licensing and mediation mechanisms to facilitate the conclusion of licence agreements with AI developers[2].

In the second half of 2024 the Hungarian Presidency provided a questionnaire[3] concerning the relationship between copyright and AI. The questionnaire covered many different topics and provided an overview of the relationship between AI and copyright, also touching upon licences and remuneration. The Summary of the contributions received, compiled by the HU Presidency,[4] provided a snapshot of AI and copyright at that moment in time. Since then, there have been further developments, including in relation to the AI Act's[5] transparency and copyright-related obligations

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1 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

2 THE DEVELOPMENT OF GENERATIVE ARTIFICIAL INTELLIGENCE FROM A COPYRIGHT PERSPECTIVE TB-01-25-001-EN-N ISBN: 978-92-9156-369-2 DOI: 10.2814/389378

3 11575/24 "Policy questionnaire on the relationship between generative Artificial Intelligence and copyright and related rights"

4 16710/24 REV 1 "Policy questionnaire on the relationship between generative Artificial Intelligence and copyright and related rights – Revised Presidency summary of the Member States contributions"

5 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)

for providers of general-purpose AI models (Article 53(1)(c) and (d)), which enter into force in August 2025.

This questionnaire covers lessons learned from Article 15 of the CDSM Directive both for comparison with regard to the framework for entering into agreements concerning AI and copyright, but also as a stand-alone topic. The Polish Presidency also touched upon measures taken at national level facilitating the negotiation of agreements with technology companies under Article 15 of the CDSM Directive and their effectiveness, as well as upon AI. The main focus of the Polish Presidency questionnaire was, however, on collective management and the possibilities it provides in terms of licensing.

In the questionnaire below, the focus is on entering into agreements regarding large-scale uses of copyright-protected content over the internet. From this perspective, it is relevant to start with the lessons learned from the right for the online use of press publications in Article 15 in the CDSM Directive[6], as such right concerns online use by information society service providers (ISSPs). The lessons learned from Article 15 in the CDSM Directive could prove valuable when it comes to ensuring the achievement of a well-functioning and fair marketplace for copyright in the age of artificial intelligence. In this context, the emergence of Generative Artificial Intelligence (GenAI) presents unprecedented challenges and opportunities, necessitating a re-evaluation of existing legal frameworks and support mechanisms to address the complexities introduced by this technology. [7]

The CDSM Directive[8] introduced two exceptions for text and data mining (TDM): for scientific research (Article 3) and for broader uses (Article 4). In the latter case, the exception applies unless the uses have been 'expressly reserved' by the right holder 'in an appropriate manner' – also referred to as an opt-out. As mentioned in EUIPO's report on the development of generative artificial intelligence from a copyright perspective[9], "direct licensing by copyright holders who effectively opt-out their content from being used under Article 4 of the CDSM Directive, has the potential to bring new revenues streams".

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6 As stated in recital 54 "…The concept of publisher of press publications should be understood as covering service providers, such as news publishers or news agencies, when they publish press publications…."

7 THE DEVELOPMENT OF GENERATIVE ARTIFICIAL INTELLIGENCE FROM A COPYRIGHT PERSPECTIVE TB-01-25-001-EN-N ISBN: 978-92-9156-369-2 DOI: 10.2814/389378

8 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

9 THE DEVELOPMENT OF GENERATIVE ARTIFICIAL INTELLIGENCE FROM A COPYRIGHT PERSPECTIVE TB-01-25-001-EN-N ISBN: 978-92-9156-369-2 DOI: 10.2814/389378 page 13.

This questionnaire aims at gathering information and providing a meaningful contribution to policy discussions on current and new challenges, given the developments in the area of copyright and AI. A targeted focus will be put on the possibility of licensing copyright-protected content and the conditions for entering into licensing agreements. It also explores the need for improving the existing framework in a solution-oriented approach. For this purpose, the Presidency will:

- collect the input received from Member States and summarise the main findings based on these answers;

- present a Presidency paper taking stock of the discussions held within the Council Working Party on Intellectual Property.

This questionnaire of the Danish Presidency of the Council of the EU shall explore, in particular, the following thematic areas:

Member States questions:

I. Lessons learned on Article 15 of the CDSM Directive

- **Licence agreements – state of play**
- **Facilitating licence agreements**

II. Licensing in the context of AI

- **Licence agreements – state of play**
- **Facilitating licence agreements**
- **The protection of image, voice, likeness, etc.**

Stakeholder questions (Annex II):

III. Lessons learned on Article 15 of the CDSM Directive

- **Licence agreements – state of play**
- **Facilitating licence agreements**

IV. Licensing in the context of AI

- **Licence agreements – state of play**
- **Facilitating licence agreements**
- **The protection of image, voice, likeness, etc.**

MEMBER STATES QUESTIONS

Licensing can be encouraged or facilitated in a number of ways. For example, Article 12 of the CDSM Directive contains provisions allowing Member States to rely on collective licensing with an extended effect in well-defined areas of use. In this context, obtaining authorisation from right holders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely to occur due to the nature of the use or of the types of works or other subject matter concerned. Other ways of encouraging a functioning licensing market could include a negotiation mechanism, assistance of an impartial body, mediators, etc.

I. Lessons learned on Article 15 of the CDSM Directive

Article 15 of the CDSM Directive establishes a new related right for press publishers, allowing them to control the online use of their press publications by ISSPs. More specifically, Article 15 grants press publishers the exclusive rights to authorise or prohibit the reproduction and making available to the public – as established in the Infosoc-Directive[10] – of their publications. Recital 54 of the CDSM Directive states: "[….] Publishers of press publications are facing problems in licensing the online use of their publications to the providers of those kinds of services, making it more difficult for them to recoup their investments. In the absence of recognition of publishers of press publications as right holders, the licensing and enforcement of rights in press publications regarding online uses by ISSPs in the digital environment are often complex and inefficient."

With a view to examining the lessons learned and the state of play with regard to the new related right for press publishers and its functioning in Member States, please find below a set of questions regarding the licensing market for the online use of press publications. To inform further discussions, it would be beneficial to collect information regarding the licences practices or national initiatives aimed at facilitating licensing in this area.

10 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

Licence agreements – state of play

The aim of Article 15 in the CDSM Directive was to strengthen the position of press publishers in the digital environment by recognising their organisational and financial contribution to the production of press publications, and to support the sustainability of the press sector.

This legal recognition also aimed at facilitating the licensing and enforcement of rights in the online environment. In order to provide a factual base for discussions in this area, the questions below aim to assess the effectiveness of the new related right for press publishers, in particular whether it has helped press publishers to recoup their investments. In addition, the form of licence agreements is relevant for understanding the ability of smaller press publishers to license their rights and the impact on the online availability of press publications. Finally, information on any case law concerning the use of the press publishers' rights will also contribute to further discussions.

1. Has any litigation concerning the rights in Article 15 of the CDSM Directive been initiated in your Member State? If yes, could you please provide further information on the case or cases concerned?

2. Has your Member State put in place any national mechanism facilitating licensing agreements or in other ways ensuring remuneration for the use of the rights covered by Article 15 in the CDSM Directive, for example extended collective licensing, arbitration, etc.? If yes, could you please elaborate on these measures?

3. **(a)** Are you aware of any licence agreements concerning the rights in Article 15 in the CDSM Directive having been concluded between press publishers and ISSPs in your Member State?

(b) If any licence agreements have been concluded, have these been granted through individual licensing or collective licensing (including, where applicable, through mechanisms with extended effect such as extended collective licensing under national law)?

4. **(a)** If licence agreements have been concluded, have these been exclusive or non-exclusive?

(b) Are the licences granted on individually negotiated terms, or are there publicly available standard offers accessible to all interested users?

Facilitating licence agreements

In order to form discussions on the lessons learned and with a view to possible optimisation of the framework in this area, the sharing of best practices could provide inspiration going forward:

5. Do you see any challenges or areas where the current EU-level framework could be improved for entering into licence agreements concerning the use of copyrighted content on the internet in the context of the rights provided for in Article 15 – for example as regards the scope and application of Article 15?

6. Are there any additional mechanisms that could be considered for facilitating licence agreements – for example final offer arbitration?

7. Are there any other aspects of this issue that are not addressed in the above questions and which you would consider appropriate to mention in this context?

II Licensing of copyright and related rights in the context of AI

TDM techniques may be used extensively in the context of the development and training of AI models, for the retrieval and analysis of vast amount of content which may be protected by copyright and related rights.[11] Article 4(3) in the CDSM Directive establishes a mechanism which enables right holders to reserve their rights with regard to the exception for TDM. This mechanism allows right holders to retain control over their exclusive rights, thus enabling them to license the uses of their works or other subject matter. The questions below will help to discuss whether there exists a well-functioning licence market for the use of copyright-protected content for the purpose of training, fine-tuning, model development, and generation of outputs of generative AI. Furthermore, we would like to pose questions on case law concerning the use of copyright protected content with regard to AI to inform further discussions.

The AI Act intersects with EU copyright law by way of the provisions included in Article 53(1)(c) and (d): obligations for providers of general-purpose AI models to (i) put in place a policy to respect EU copyright law (including provisions on TDM rights reservations),

(ii) draw up and make publicly available a sufficiently detailed summary about the content used for training of the general-purpose AI model. These obligations become applicable on 2 August 2025.

In order to get a full view of the current licence market – and as Article 4 of the CDSM Directive concerning the exception for TDM for purposes other than scientific research allows for reproductions and extractions to be retained for as long as necessary for the purpose of TDM , and does not cover the communication to the public or potential infringements, the questions below are not necessarily limited to training purposes.

With a view to enabling discussions on the licensing market for copyright and related rights, please find below questions regarding the development of licensing in the context of the training and deployment of generative AI.

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11 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)

Licence agreements – state of play

8. Has any national litigation concerning the use of copyright-protected content in the context of AI been initiated in your Member State? If yes, could you please provide further information on the case or cases concerned?

9. Has your Member State introduced any measures to encourage or support the conclusion of licensing agreements and contribute to the remuneration of right holders? If yes, could you please elaborate on these measures?

10. Are you aware of any licence agreements concerning the use of works or subject matter protected by copyright and related rights for the training of/use in generative AI models, systems or applications having been concluded in you Member State?

11. Do you know whether such licensing agreements cover solely the use of the content for training the models; and/or the use of content in the deployment of the AI systems or applications and the generation of output?

12. If any licence agreements have been concluded, have these been granted through individual licensing or collective licensing (including, where applicable, through mechanisms with an extended effect such as extended collective licensing, when available under national law)?

13. **(a)** If licence agreements have been concluded, have these been exclusive or non-exclusive?

(b) Are the licences granted on individually negotiated terms, or are there publicly available standard offers accessible to all interested users?

14. Besides the AI Act's obligations for providers of general-purpose AI models to put in place a policy to comply with EU copyright law and to make publicly available a summary of the training data, applicable from 2 August 2025, do you see the need for additional measures at national and/or EU level to increase transparency and facilitate the conclusion of licence agreements concerning the use of copyright-protected content in AI training or further uses related to generative AI-systems? If yes, could you please elaborate?

Facilitating licence agreements

The following questions are aimed at informing further discussions and potentially inspiring improvements for facilitating licence agreements between right holders and AI providers:

15. Do you see the need for improving the framework at EU-level for facilitating the conclusion of licence agreements concerning the use of copyright-protected content for the purpose of AI training or further uses related to generative AI-systems?

16. In your opinion, would the introduction of standardised licences or smart contracts help support the conclusion of licensing agreements? If so, in which situations / for which type of content?

With regard to facilitating licence agreements, stakeholders have cautioned that a single solution may not be suitable across all content sectors and for all right holders (authors/performers/publishers, etc). Each sector, whether music, audio-visual, publishing, or others, has distinct characteristics and different ways of licensing (direct, through collective management organisations, etc), meaning that a one-size-fits-all approach could prove inadequate. With a view to informing discussions, the questions below can be answered on a sectorial level:

17. Do you think that additional mechanisms should be explored at EU level in order to facilitate licensing and improve the remuneration of right holders (if so, please provide a justification, including any potential advantages and limitations of the proposed solutions), for example:

(a) Extended collective licences (if yes, could this be sector-specific)?

(b) Mandatory collective management (if yes, could this be sector-specific)?

(c) An arbitration mechanism, for example a final offer of arbitration model[12] (if yes, could this be sector-specific)?

(d) A model with a requirement/obligation to conclude licensing agreements with right holders?

[12] Final offer arbitration (FOA), also known as last-best offer arbitration, is a type of dispute resolution where each party submits a final offer to an arbitrator, who is then limited to choosing one of those offers to be the binding decision.

(e) An AI-ombudsman who could facilitate dialogue between the parties and ensure the confidentiality of data supplied by companies, or other third-party involvement ensuring confidentiality of data in order to facilitate licences?

(f) A rebuttable presumption of use of copyright-protected content in the context of the development or deployment of AI?

(g) Other means?

18. Are there any other aspects of this issue that are not addressed in the above questions and which you would consider appropriate to mention in this context?

The protection of image, voice, likeness, etc.

The emergence of AI has made it possible to replicate performers' features using their personal characteristics such as physical image/appearance, voice and likeness, based on their previous performances. In light of the development that artificial intelligence has undergone in just a few years, there may be an expanded need for protection for performers as they do not have the same protection as authors, whose works may not be copied in their original or altered form. It is now possible to re-create and manipulate performances using, for example, artificial intelligence, for producing video and audio based on a performance and thereby using the performers' image voice, likeness, etc. in altered form. The protection of image, voice, likeness, etc. is not covered by the EU copyright acquis and is in many Member States regulated as part of different sets of regulation, for example the Criminal Code (identity theft), the Marketing Practices and to some degree the GDPR Regulation.

19. What challenges do performers currently face in this context in your Member State?

20. Do you have rules at national level, in copyright law or beyond, to ensure the protection of the distinguishing features of performers in the context of AI?

21. Are you aware of any contractual practices affecting the protection of performers' image, voice, likeness and the use of these elements in the context of AI?

22. Do you see a need for a specific EU-related right for the likeness of performers, enabling them to choose to license – or not – their personality rights/features?

STAKEHOLDER QUESTIONS

With a view to allowing for stakeholder input on the same issues and questions raised to Member States, please find below a list of questions that Member States might find useful when consulting relevant stakeholders. Please note that the final Presidency summary will focus on the positions of Member States. However, this segment of the questionnaire will allow stakeholders to voice their opinions and facilitate referencing to these opinions by Member States.

III Lessons learned on Article 15 of the CDSM Directive

Licence agreements – state of play – Art. 15

23. Has any litigation concerning the rights in Article 15 of the CDSM Directive been initiated in your Member State? If yes, could you please provide further information on the case or cases concerned?

24. Has your Member State put in place any national mechanism facilitating licensing agreements or in other ways ensuring remuneration for the use of the rights covered by Article 15 in the CDSM Directive, for example extended collective licensing, arbitration, etc.? If yes, could you please elaborate on these measures?

25. **(a)** Are you aware of any licence agreements concerning the rights in Article 15 in the CDSM Directive having been concluded between press publishers and ISSPs in your Member State?

(b) If any licence agreements have been concluded, have these been granted through individual licensing or collective licensing (including, where applicable, through mechanisms with extended effect such as extended collective licensing under national law)?

26. **(a)** If licence agreements have been concluded, have these been exclusive or non-exclusive?

(b) Are the licences granted on individually negotiated terms, or are there publicly available standard offers accessible to all interested users?

Facilitating licence agreements – Art. 15

27. Do you see any challenges or areas where the current EU-level framework could be improved for entering into licence agreements concerning the use of copyrighted content on the internet in the context of the rights of Article 15 – for example as regards the scope and application of Article 15?

28. Are there any additional mechanisms that could be considered for facilitating licence agreements – for example final offer arbitration?

29. Are there any other aspects of this issue that are not addressed in the above questions and which you would consider appropriate to mention in this context?

IV Licensing in the context of AI

Licence agreements – state of play

30. Has any national litigation concerning the use of copyright-protected content in the context of AI been initiated in your Member State? If yes, could you please provide further information on the case or cases concerned?

31. Has your Member State introduced any measures to encourage or support the conclusion of licensing agreements and contribute to the remuneration of right holders? If yes, could you please elaborate on these measures?

32. Are you aware of any licence agreements concerning the use of works or subject matter protected by copyright and related rights for the training of/use in generative AI models, systems or applications having been concluded in you Member State?

33. Do you know whether such licensing agreements cover solely the use of the content for training the models; and/or the use of content in the deployment of the AI systems or applications and the generation of output?

34. If any licence agreements have been concluded, have these been granted through individual licensing or collective licensing (including, where applicable, through mechanisms with an extended effect such as extended collective licensing, when available under national law)?

35. **(a)** If licence agreements have been concluded, have these been exclusive or non-exclusive?

(b) Are the licences granted on individually negotiated terms, or are there publicly available standard offers accessible to all interested users?

36. Besides the AI Act's obligations for providers of general-purpose AI models to put in place a policy to comply with EU copyright law and to make publicly available a summary of the training data, applicable from 2 August 2025, do you see the need for additional measures at national and/or EU level to increase transparency and facilitate the conclusion of licence agreements concerning the use of copyright-protected content in AI training or further uses related to generative AI-systems? If yes, could you please elaborate?

Facilitating licence agreements

37. Do you think that additional mechanisms should be explored at EU level in order to facilitate licensing and improve the remuneration of right holders, (If so, please provide a justification, including any potential advantages and limitations of the proposed solutions), for example:

(a) Extended collective licences (if yes, could this be sector-specific)?

(b) Mandatory collective management (if yes, could this be sector-specific)?

(c) An arbitration mechanism – for example a final offer of arbitration model[13] (if yes, could this be sector-specific)?

(d) A model with a requirement/obligation to conclude licensing agreements with right holders?

(e) An AI-ombudsman who could facilitate dialogue between the parties and ensure the confidentiality of data supplied by companies, or other third-party involvement ensuring confidentiality of data in order to facilitate licences?

[13] Final offer arbitration (FOA), also known as last-best offer arbitration, is a type of dispute resolution where each party submits a final offer to an arbitrator, who is then limited to choosing one of those offers to be the binding decision.

(f) A rebuttable presumption of use of copyright protected content in the context of the development or deployment of AI?

(g) Other means?

38. Are there any other aspects of this issue that are not addressed in the above questions and which you would consider appropriate to mention in this context?

The protection of image, voice, likeness, etc.

39. What challenges do performers currently face in this context in your Member State?

40. Do you have rules at national level, in copyright law or beyond, to ensure the protection of the distinguishing features of performers in the context of AI?

41. Are you aware of any contractual practices affecting the protection of performers' image, voice, likeness and their use in the context of AI?

42. Do you see a need for a specific EU-related right for the likeness of performers enabling them to choose to license – or not – their personality rights/features?