



## Response to the Public Consultation on National Implementation of EU Harmonised Rules on Artificial Intelligence (AI)

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### Context

The **Irish Music Rights Organisation (IMRO)** administers the performing right in copyright music on behalf of its members. Our membership of 25,000+ comprises songwriters, composers and music publishers and in addition to members we also administer rights on behalf of over 100 international affiliate organisations. IMRO aims to expand and maximise the collection and distribution of music royalties with a particular focus on the empowerment of music creators, to create a world where music is valued and its creators are championed.

Music is integral to Ireland, to our culture, our international reputation and our society. It is vital in sustaining local jobs, strengthening and developing communities and supporting Irish culture in the broadest sense. The Irish music sector employs more than 13,000 people and makes a significant economic contribution, to the tune of €700 million annually in direct and indirect economic activity, to both the national and local economy. Every minute of every day Irish people's lives are enhanced by music, whether this is the radio keeping them company as they commute to work, attending a festival during the summer or the track that keeps them motivated as they exercise, whether it's the music that's part of their favourite television programme, the backing tracks that distract them as they wait on hold or run around the supermarket or the band that livens up their Friday night, we cannot escape or deny the powerful and all-encompassing impact of music on our lives.

Copyright and Creative Industries (CCIs) are also characterised by exceptionally strong contributions to both European and Irish economic performances and job creation. CCIs account for a 6.9% share in total EU GDP and an 8.2% share in total employment (direct and indirect) in the EU<sup>1</sup> Ireland's CCIs are famous 'heavyweights' in the European and indeed global economic contexts – by dint of excellence in creative talent, in standard setting approaches to business and due to Ireland's robust approach to the highest standards of copyright laws and enforcement.

IMRO looks forward to cooperating with the Generative AI services, the Irish government and Coimisiún na Meán to set up an effective collaboration to ensure that GPAI models can access the widest possible music repertoire with legal certainty, while their compliance with EU law and remuneration of Irish creators are ensured.

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<sup>1</sup> EUIPO, EPO, IPR-intensive industries and economic performance in the European Union, 4th ed., 2022

## **Response to the Public Consultation on National Implementation of EU Harmonised Rules on Artificial Intelligence (AI)**

### **QUESTIONS**

1. For national implementation of the Act, different approaches to the designation of competent authorities could be considered, ranging from a centralised model to a more distributed, sector-based approach. Selecting an approach will likely involve trade-offs. For example, a distributed approach may provide better access to sectoral expertise but may pose coordination challenges.

### **What considerations should the Department have regard to when devising the configuration of national competent authorities for implementation?**

IMRO believes that Coimisiún na Meán is best placed to implement the AI Act at a national level. Its function as the regulator for broadcasters, on demand services and online media, with the additional responsibility for supporting media development, means that it already has significant involvement with many of the main users and equally importantly the developers of AI technology. Use of the existing regulatory landscape will reduce the potential for duplication of functions across different authorities and centralise the activities required giving consistency to different applications of AI.

In addition, Coimisiún an Meán is currently the designated Digital Services Coordinator in Ireland to supervise, enforce and monitor the implementation of the Digital Services Act, in close coordination with the EU Digital Services Board, the European Commission's DG CNECT and indeed the EU AI Office. Recital 116 and Article 56(3) requires Member States to cooperate with the AI Office when it is drawing up, reviewing and adaptation of codes of practice of AI systems. A careful consideration on the policy of the GPAI models on compliance with EU law is absolutely essential in this process and any support and help by the Irish government in ensuring proper compliance with EU law would be beneficial.

Coimisiún na Meán has two Commissioners solely focused on Digital and Online activities. Included in these roles are developing relationships with counterparts in other European countries, sitting on the European Board of Digital Services, the development and approval of trusted flaggers and vetting researchers access to data. These Commissioners and their respective teams in Coimisiún na Meán have regular contact with the main technology companies, have the power and the ability to compel technology companies to adhere to legislation and regulations, have the procedures in place to implement fines if necessary and have the required connections within the wider EU to gather information and make informed decisions. The availability and allocation of resources and expertise exists within the regulator's office in its involvement with and

consultation of relevant stakeholders including AI developers and users, consumers, academia, legislators and other relevant authorities. This should result in centralised oversight with necessary and required flexibility to make and regulate principles which will benefit all aspects of AI in Ireland.

It should be recalled that this centralisation also exists at the EU level, with the enforcement teams for both the EU Digital Services Act (DSA) and EU Artificial Intelligence Act (AI Act) operating within the European Commission's Directorate-General for Communications Networks, Content and Technology (DG CNECT).

Finally, AI Act (Recital 149 and Article 65(3)) requires Member States to designate one representative for the AI Board for a period of three years, with an option to renew. Such representatives may be any persons belonging to public entities, who should have the relevant competences and powers to facilitate coordination at national level and contribute to the achievement of the Board's tasks. The Irish Government has selected Jean Carbury, Assistant Secretary at the Digital, EU and Climate Division within the Department of Enterprise, Trade and Employment. It is important to ensure that Ms Carbury has the necessary resources which will be critical for the lawful functioning of GPAI models and IMRO is available to meet with Ms Carbury on a regular basis to provide up to date information on developments within the music and creative sectors

2. The EU has adopted a series of Regulations in recent years designed to protect consumers, strengthen the internal market, and ensure that the EU remains at the forefront of innovation and the adoption of advanced technologies.

### **Are there potential synergies between the implementation of AI Act and the implementation of other EU Regulations applying to Digital markets, services, and infrastructure?**

In our view, there is great potential to create synergies between the implementation of AI Act and the implementation of other EU and national legislations. The EU Copyright in the Digital Single Market Directive (CDSM Directive) and the application of the Copyright and related Rights Act have a particular importance for the rights of authors, composers and publishers represented by IMRO.

It should be noted that certain requests for information issued by the European Commission under the Digital Services Act (DSA) already refer to systemic risks related to the use of Generative AI systems, indicating that synergies in the enforcement approaches under the DSA on the one hand and the AI Act on the other are not only possible but already being pursued.

The AI Act provides new tools for right holders to exercise their existing rights and introduces three critical obligations for providers of General Purpose AI (GPAI) models.

- Firstly, GPAI model providers must demonstrate that they have policies put in place to comply with EU copyright laws – regardless of where in the world the model training has taken place;
- Secondly, GPAI providers must make available a sufficiently detailed summary of the works used for training their models – with the legislation’s express goal of enabling copyright holders to effectively exercise and enforce their rights, prevent the provision of illegal content online and reduce economic harm;
- Thirdly, GPAI providers are required to draw up and retain detailed technical documentation, including information on dataset provenance and composition, to be made available to enforcement authorities upon request and open to provision to downstream deployers. For the purposes of copyright protected works, this “detailed technical documentation” means each musical work which has been used for model training and Generative AI. Without such detail, the music sector is unable to enforce its rights.

In the process of creating AI-generated content, several copyright-relevant acts may be undertaken, including scraping and re-producing data from websites, creating a database for training, analysing patterns, and developing a model. All rights involved in this process are controlled by creatives and their representatives. GPAI models must comply with copyright law. In legal terms this means, as the EU AI Act reiterates, – that this need for GPAI to comply with copyright law, means the entire existing acquis of copyright law including for example the 2001 InfoSoc Directive, the 2004 EU IPR Enforcement Directive, the 2019 Copyright Directive, the 2022 Digital Services Act etc.

When it comes to copyright exceptions, these may only be relied upon by valid applicants, for specific permitted usages (notably excluding the scraping of content) and only where the requirements for their application have been met (e.g. the requirement of lawful access). For example, AI companies scraping copyright protected content from our digital service partners such as YouTube, Facebook, X, Spotify, Apple Music and other digital licensed content services are breaking contract law, copyright law and the AI Act. This is not lawful access of online content.

3. **Harnessing Digital - The Digital Ireland Framework** establishes the goal for Ireland to be a digital leader at the heart of European and global digital developments. In support of this goal, Ireland is a member of the D9+ Group, an informal alliance of Digital Ministers from the digital frontrunner EU Member States. It also calls for Ireland to be a “centre of regulatory excellence” in Europe. The AI Act will set out a requirement to

promote innovation, having regard to SMEs, including start-ups, that are providers or deployers of AI systems.

**How can Ireland's implementation of the AI Act bolster Ireland's position as a leading Digital Economy, increasing investment and accelerating innovation in AI? What would excellence in AI Regulation look like?**

Public policy needs to focus on enabling AI and harnessing its benefits whilst also ensuring the protection of music and other creative industries from the same technology. The Government's primary focus must be on allowing artificial intelligence technologies to develop fairly in compliance with copyright law and be used to support human culture and artistry.

It is critical to have a comprehensive regulatory framework for Ireland to effectively assert its place in the digital economy. The proposed Digital Ireland Framework, which outlines specific goals and actions, aims to establish Ireland as a foremost digital innovator and a hub of excellence from a European viewpoint.

The roadmap provided by the Digital Ireland Framework will guide overarching efforts. Yet the effectiveness of the framework will hinge on detailed execution, particularly the proficiency of the regulatory body and the engagement level of key stakeholders.

To foster growth and innovation, Ireland's regulatory environment should incentivise progress, captivate interest, and encourage groundbreaking ideas. This necessitates a regulatory authority that is responsive, easily approachable, ready to act swiftly, and open to calculated risks. Leaders of such a body need to be supportive of the community they oversee and ensure the employees are capable of adapting quickly, reflecting the dynamism of the tech industry they regulate.

The integral involvement of stakeholders can introduce valuable, practical insights into the regulator's decision-making process. However, collecting stakeholder feedback is only meaningful if it significantly influences regulatory decisions and practices. A consultative approach with stakeholders, fully integrating their perspectives, will create a fertile ground for artificial intelligence development and position Ireland as an attractive destination for investment.

The formation of a Digital Advisory Forum represents a positive step towards regulatory success. An additional enhancement would be to establish sector-specific subdivisions within this forum, leading to precise, industry-tailored guidance on AI advancements and application. Such a structure would allow for specialised knowledge from active participants in the various sectors to make well-informed recommendations to the regulatory authorities.

It is crucial that the Irish government provides political support to ensure that the transparency reports generated by GPAI models include at least the following elements.

- **Description of the methods and process used by the AI provider to identify and respect the rights of rightsholders:** This is to provide an understanding of the process put in place by AI providers to respect different reservations of rights, which is essential to assess the trustworthiness and legality of the data and content collected, as well as the due diligence deployed by AI providers. Moreover, where protected works are used, what measures have been put in place to ensure compliance.
- **Type of content used as training data:** It will be necessary to assess the likelihood of a rightsholder's content having been used as training data by an AI provider. This can also include the provenance and/or amount of the type of content used.
- **List of all the sources of content used for pre-training and training of GPAI (which includes Generative AI):** Listing all the digital sources (websites, apps, acquired datasets including synthetic datasets etc.) accessed, purchased, crawled, scraped or 'mined' as part of the data collection process is essential to track potential illegal sources or illegal collections. Information on the legal basis used to mine the website (public domain, licence, exception) would also be necessary to assess the legality of the mining.
- **Date of the data collection:** To determine the timeline of crawling or collection of data and thus the potential illegality of the collection of a content.
- **The legal basis for use of copyright protected data:** the basis for legal use of protected data are: when licensed by relevant rightsholders for training or GenAI purposes; when proven to fall within scope of specific uses permitted by a copyright exception (if cited so, the exception should be specified); when fully owned by the GPAI company; when the training data is within the public domain (this must be globally true in order to avoid infringements of rights and laws). These necessary justifications should be provided per data source and for each data acquisition phase.
- **List and details about the third-party datasets used for the training (including URLs in the case of publicly available datasets):** AI providers often rely on a combination of ad-hoc mined content and datasets provided by other participants in the AI supply chain. Providing information of such third-party datasets is equally important, as illegally obtained content has been used to feed such datasets on many occasions. The information provided in the summary should be consistent and integral, so if the link or the website

where the data set is located is changed or deleted in time, the information can still be retrieved.

- **Available information to identify works used as training data, including through these standardised identifiers (e.g. ISWC, ISRC in case of music) :** Where works are used as training data, they are often associated with means to identify them, which would allow rightsholders to directly identify works. Music rightsholders have been using standardised work identifiers that are included in the metadata of works for many years and these should be also included for a granular reporting from GPAI providers.
- **Contact information available for rightsholders for potential follow-up:** As a publicly available summary of the training data may not necessarily contain all the information needed, or require further clarification, it is necessary for the AI provider to provide rightsholders with the means to contact the provider and ask for further information on a bilateral basis. It is essential to guarantee the meaningful ability for rightsholders to enforce their rights. As such, AI providers should have a due diligence obligation to follow up on information requests sent by rightsholders.
- **Possibility of audit and verification of the information provided by the GPAI models:** This would require GPAI providers to indicate the ways that rightsholders can undertake to use third-party technology providers to verify and check the training data of the GPAI provider against IMRO's repertoire to ensure compliance.
- **List of options to challenge the report or to lodge a complaint at the AI Office:** As the AI Office remains the main entity to assess and evaluate the transparency reports, an easy and accessible guide on how to lodge complaints on possible unsatisfactory declarations and the options to enforce the EU law provided by the AI Office would also be useful.
- **Having access to civil liability instruments within Irish law to access to databases of the Generative AI services** for the purposes of evidence collection, in case of an infringement, especially where the service does not provide a "sufficiently detailed summary to allow rightsholders to exercise and enforce their rights". Such instruments might include provisions allowing for evidence discovery orders issued by the judiciary.
- **Awareness Training Activities:** Recital 143 and Article 62(1b/c) require national authorities to organise specific awareness raising and training activities on the application of the AI Act tailored to the needs of SMEs including start-ups, deployers and, as appropriate, local public authorities. These could usefully include awareness raising and information on copyright compliance for Irish SMEs and innovative services in the field of generative

AI services, to which IMRO can also usefully contribute and provide expertise.

4. AI - Here for Good: National Artificial Intelligence Strategy for Ireland sets out how Ireland can be an international leader in using AI to benefit our economy and society, through a people-centred, ethical approach to its development, adoption, and use. In recognition of the wide-ranging effect AI will have on our lives, this Strategy considers AI from several perspectives: Building public trust in AI; Leveraging AI for economic and societal benefit; and Enablers for AI.

**How can Ireland’s implementation of the AI Act drive support and accelerate progress from each of these perspectives while meeting our regulatory obligations?**

Creative works shape our culture, identity, values, and worldview. There are fundamental elements of our culture that are uniquely human. Only humans are capable of communicating the endless intricacies, nuances, and complications of the human condition through art, whether it be music, performance, writing, or any other form of creativity. Developments in artificial intelligence are exciting and could enable advances, but AI can never replace human expression and artistry.

Ireland’s implementation of the EU AI Act can drive support and accelerate progress by ensuring that existing and emergent forms of AI comply closely with the AI Act as well as existing laws. This will require effective implementation by the government of the detailed provisions of the AI Act, which IMRO is happy to advise and support on , but as importantly is active and speedy work to address ongoing and increasing non-compliance with existing copyright and competitions laws. Too many AI companies are breaching these en masse in an illegal effort to secure commercial advantage.

As new branches of AI technologies emerge and become more central aspects of professions, economies and online consumer interfaces, they must do so legally, responsibly and with ethical respect for the irreplaceable artists, performers, and creatives who have shaped our history and will chart the future.

These principles outline how we can responsibly use artificial intelligence – to support human creativity and accomplishment with respect to the inimitable value of human artistry and expression.

**1. TECHNOLOGY HAS LONG EMPOWERED HUMAN EXPRESSION, AND AI WILL BE NO DIFFERENT**

For generations, various technologies have been used successfully to support human creativity. Take music, for example, from piano rolls to amplification to guitar pedals to synthesizers to drum machines to digital



audio workstations, beat libraries and stems and beyond, musical creators have long used technology to express their visions through different voices, instruments, and devices. AI already is and will increasingly play that role as a tool to assist the creative process, allowing for a wider range of people to express themselves creatively. Moreover, AI has many valuable uses outside of the creative process itself, including those that amplify fan connections, hone personalised recommendations, identify content quickly and accurately, assist with scheduling, automate and enhance efficient payment systems – and more. We embrace these technological advances.

**2. HUMAN CREATED WORKS WILL CONTINUE TO PLAY AN ESSENTIAL ROLE IN OUR LIVES**

Creative works shape our identity, values, and worldview. People relate most deeply to works that embody the lived experience, perceptions, and attitudes of others. Only humans can create and fully realise works written, recorded, created, or performed with such specific meaning. Art cannot exist independent of human culture.

**3. USE OF COPYRIGHTED WORKS, AND THE USE OF VOICES AND LIKENESSES OF PROFESSIONAL PERFORMERS AND CREATORS REQUIRES AUTHORISATION, LICENSING, & COMPLIANCE WITH ALL RELEVANT LAWS**

We fully recognise the potential of forms of AI to push new boundaries for knowledge, science and technological progress. However, as with all predecessor technologies, the use of copyrighted works requires permission from the copyright owner. The point of difference here is scale. GenAI has the ability to access, train on and reproduce new output based on the entirety of the world’s published music. AI is subject to free-market licensing for the use of works in the development and training of AI models – as the 2024 EU AI Act reiterates. Creators and copyright owners legally retain exclusive control over determining how their content is used commercially, but we need to ensure this legal fundamental is actualised in the market. Exclusive control therefor does not mean prevention, but rather prior authorisation for such uses. AI developers must ensure any content used for training purposes is approved and licensed by the copyright owner, including content previously used by any pre-trained AIs they may adopt. Additionally, performers’ voices and likenesses must only be used with their consent and fair market compensation for specific uses.

**4. GOVERNMENTS SHOULD NOT CREATE NEW COPYRIGHT OR OTHER IP EXEMPTIONS THAT ALLOW AI DEVELOPERS TO EXPLOIT CREATORS WITHOUT PERMISSION OR COMPENSATION**

As the EU and many other governments worldwide have stipulated, existing copyright law is robust and caters for almost all iterations of AI. Therefore governments do not need to pursue any regulatory approach to AI which limits copyright protections or loss of IP protections. This was considered by

the UK government in an extensive consultation and dismissed due to the economic harm it would cause. AI is not and must not receive exemptions from copyright law or other intellectual property laws and must comply with core principles of fair market competition and compensation. Creating special shortcuts or legal loopholes for AI would harm the economy and creative livelihoods, damage creators' brands and limit incentives to create and invest in new works.

**5. COPYRIGHT SHOULD ONLY PROTECT THE UNIQUE VALUE OF HUMAN INTELLECTUAL CREATIVITY**

Copyright protection exists to help incentivise and reward human creativity, skill, labour, and judgment, not output solely created and generated by machines. Human creators, whether they use traditional tools or express their creativity using computers, are the foundation of the creative industries and we must ensure that human creators are paid for their work.

**6. TRUSTWORTHINESS AND TRANSPARENCY ARE ESSENTIAL TO THE SUCCESS OF PROTECTION OF CREATORS**

Complete recordkeeping of copyrighted works, performances, and likenesses, including the way in which they were used to develop and train any AI system, is essential. Algorithmic transparency and clear identification of a work's provenance are foundational to AI trustworthiness. Stakeholders should work collaboratively to develop standards for technologies that identify the input used to create AI-generated output. In addition to obtaining appropriate licenses, content generated solely by AI should be labelled describing all inputs and methodology used to create it -- informing consumer choices and protecting creators and rightsholders.

**7. CREATORS' INTERESTS MUST BE REPRESENTED IN POLICYMAKING**

Policymakers must consider the interests of human creators when crafting policy around AI. Creators live on the forefront of, and are building and inspiring, evolutions in technology and as such need a seat at the table in any conversations regarding legislation, regulation, or government priorities regarding AI that would impact their creativity and the way it affects their industry and livelihood.