

Position on the AI-Act-E¹ and the ongoing triologue

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In the ongoing triologue negotiations on the AI Act, there is an opportunity for the European Union to lead the way in creating a responsible AI framework globally. Rights holders and creators have clearly indicated that AI is much more than a technological innovation; it can act as a catalyst for creativity and innovation. But this innovation must be in line with the principles and legal framework that protect our cultural and creative identity, diversity of expression and media. In the AI Act, the legislator must therefore ensure in particular the balance between technological progress and the protection of intellectual property and applicable copyright law.

For the private audiovisual media represented by VAUNET, the focus is currently on the regulation of generative AI in the AI Act-E.

For a fair legal framework, the protection of copyrights and ancillary copyrights against unauthorised access and use is essential for the training of generative AI systems. Therefore, transparency of data use for training of generative AI systems by providers of foundation models as well as appropriate mechanisms that enable proof of exploitation of copyright-protected content are essential aspects in order not to jeopardise the preservation of the intellectual property value chain. These should always be taken into account by the triologue parties in the course of further negotiations.

VAUNET supports the proposal of the EU Parliament (EP) to include generative AI in the AI Act-E. Among other things, Art. 28 b No. 4 c) provides for an obligation for providers of generative AI to document and make publicly available a sufficiently detailed summary of the use of copyright-protected training data. Such a transparency obligation is a step in the right direction but should be further specified and supplemented.

Even in view of the high time pressure under which the triologue negotiations are being conducted, the legislator must not disregard the aforementioned aspects that are essential for rights holders. Art. 6 (12) of the Digital Markets Act (obligation to FRAND conditions), which now represents a central regulation vis-à-vis gatekeepers, may

¹ * The position refers to the AI Act as amended by the 4 column document dated 29 June 2023 (AI Act-E).

serve as a model for courageous adjustments to the legal text at the end of the trialogue.

VAUNET calls on all trilogue parties to support the EP proposal on the AI Act with regard to generative AI and suggests subsequent adjustments:

1. Proposed amendment to Art. 28 b No. 4c) AI-Act-E

Documentation instead of summary

From VAUNET's point of view, Art. 28b No. 4c AI-Act-E should contain more detailed requirements for the labelling of copyright-protected content used for training.

To ensure that the rights of creators and rights holders in Europe are protected, any AI system offered in the EU must respect the EU copyright framework. This includes, indeed requires, that developers and operators of AI systems and those models of generative AI, keep detailed records/documentation of the use of works, excerpts used from third party works or productions, and other protected content. These records should be made from the beginning to ensure a continuous record of the chain of use. A **"sufficiently detailed summary" is not enough.**

In order to continue to enable the training of generative AI models while respecting the rights of creators and rights holders, it is important to **secure** the intellectual property **value chain**. This could be achieved by requiring contracts for the use of, in particular, copyright-protected training data. Accordingly, a **duty to negotiate** should be implemented in Art. 28b No. 4c AI-Act-E.

Documentation affordable, especially for Big Tech

There must be mechanisms in the AI Act that make it easier for rights holders to assert their rights, while at the same time providers of AI systems/foundation models must ensure clarity through transparent documentation.

The frequently used argument that such detailed documentation is not feasible should not be accepted – especially with regard to large players: Given that the most significant AI applications today are in the hands of powerful big tech companies and international digital providers or companies economically linked to them, it is hardly convincing that automated documentation should not be possible. In this respect, a first step could be to differentiate the documentation and transparency obligations with a focus on gatekeepers (cf. DMA) or VLOPs (cf. DSA) and their economically linked companies (shareholdings, subsidiaries).

Ensuring the applicability of the AI Act by fiction

In order to ensure that the **AI Act does not** come to **nothing** – e.g., because the storage during the training of generative AI models does not take place in the EU – a **fiction of the legally relevant acts as taking place in the EU** should be added in a new Art. 28b No. 5 to be drafted.

VAUNET therefore proposes the following adjustments (changes highlighted)

Art. 28b No. 4c: "Providers of foundation models used in AI systems specifically intended to generate, with varying levels of autonomy, content such as complex text, images, audio, or video ("generative AI") and providers who specialize a foundation model into a generative AI system, shall in addition

a) *unchanged*

b) *unchanged*

c) *without prejudice to Union or national or Union legislation on copyright, document and **regularly** make publicly available a **sufficiently-detailed summary documentation** of the use of training data protected under copyright law and **shall enter into negotiations to be conducted in good faith regarding the authorisation for such use.***

Art. 28b no. 5 (new):

Any use or other processing of works or other subject matter published within the Union for training, input, or any other purpose shall be deemed to have been made within the Union.

2. More precise terms/definitions with regard to generative AI important

VAUNET also considers a precise definition of generative AI in Art. 3 para. 1 AI-Act-E to be necessary, which is missing in the draft so far.

Furthermore, the terms "generative AI" and "general purpose AI" should be more clearly separated and delimited in recital 60e AI-Act-E.

Finally, for the sake of clarity, Art. 52 AI-Act-E should speak of "transparency requirements for developers of generative AI" and not of "*transparency obligations for specific AI systems*".

3. Enable Delegated Acts

In addition to the regulations on generative AI proposed by the EP in Art. 28b AI-Act-E, VAUNET supports the proposal of some members of the EP to empower the **EU**

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Commission to adopt ***delegated acts***. This would make it possible to react flexibly to new regulatory requirements.

About VAUNET:

VAUNET is the umbrella organisation of private audiovisual media in Germany. The diverse business areas of the approximately 160 members include TV, radio, web and streaming offerings. The trade association aims to create acceptance for the political and economic concerns of the audiovisual media on a national and European level and to raise awareness of the great socio-political and cultural importance of the industry in the digital age.