**FIAPF ORAL CONTRIBUTION**

**TO WIPO ‘CONVERSATION’ ON IP AND FRONTIER TECHNOLOGIES**

**14 MARCH 2024**

 *NOT FOR CIRCULATION*

Thank you for giving me the floor and for the opportunity to participate in this important exchange on AI and related ‘frontier technologies’.

The anagram ‘FIAPF’ stands for the International Federation of Film Producers Associations. We are a global trade association. We currently have 37 national film and TV producers’ organisations from 29 countries as our members and growing. The membership is highly diverse, with organisations from all five Continents, with a wide range of national audio-visual industries’ sizes and business models.

IP rights – and the Copyright framework in particular - are the living DNA chains of incentivizing and protecting creativity and investment in the film and TV industries – ours is a capital-intensive economic activity, with every individual work made to a professional standard requiring substantial upfront expenditure at considerable risk – in development, production and distribution - and with no guarantee of a return on investment. IP laws make up the indispensable legal undergirding that enables us to protect the creative and economic value of this high-riskprofessional activity.

And so, we think legislators need to make a priority of ensuring our rights continue to be protected meaningfully in the context of the use of our works for training AI systems. We think the way forward entails ensuring AI training is an orderly and transparent domain, with appropriate security and the ability for rights holders to exercise the relevant exclusive rights, and decide whether or not to authorize AI training on their works. This includes the ability to decide unilaterally whether to license and if so, to negotiate terms on a voluntary basis in an ecosystem that fully upholds contractual freedom as a core principle of copyright law.

In order to be meaningful, this approach also demands the freedom for rights holders to opt out of their work being used for training of AI servicess such as LLMs or image-generation models. There are certainly different legal approaches to achieve this objective, but for us the key element is the ability of rightholders to exercise relevant exclusive rights, i.e. to authorize training for AI purposes or not.

Whatever the challenges may be, we think it is vital for UN Member States to resist succumbing to a kind of regulatory panic and attempt to ‘resolve’ the complex challenges of AI training by replacing the free exercise of exclusive rights with the imposition of one-size-fits-all, collective licensing regimes applied to all copyright works for the purpose of prioritising AI training. This approach would be counter-productive. It would mean riding roughshod over the considerable differences between cultural industries: a book a song and a film each have different IP DNAs. Compulsory licensing would severely curtail the value of the exclusive rights granted creative participants in collective works such as films and television series. It would hobble our ability to raise funds from the rights’ licensing environment and set licensing conditions that reflect the relative contribution of specific copyright works to the training of specific AI systems.

For a workable ecosystem to arise and enable both AI training and the upholding of exclusive rights, two other parameters must be in place: 1) the AI industry must be directed to maintain reasonable and transparent records of the copyright input they utilise for training purposes. Not only will such transparency protect the consumer and provide important data to guide regulatory choices, but it will also provide important information to guide voluntary licensing agreements between copyright owners and AI operators as well as rightholders’ enforcement activities where no licence is in place/opt-out has been articulated. 2) Legal dispositions that protect the use by rights holders or their licensees of technical protection measures, must be upheld in the AI environment. These dispositions are enshrined in the WIPO treaties and TRIPS agreement; they are indispensable legal tenets for supporting a wide variety of business models that enable the delivery of diverse content to consumers all over the world.

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