



Artificial Intelligence – the perspective from European film agencies May 2024

With the arrival of AI technologies and Generative AI models in particular, film agencies have a strategic role to play in mitigating risks and making sure that AI will serve the broad community of European human-AV creators and cultural diversity.

AI as a tool to serve human creation

- Film agencies exist first and foremost to support human creation and authored works, via ambitious cultural policies harnessing technological development to the benefit of artistic audacity and cultural diversity. If AI keeps **humans in the driver's seat at all times** and is properly regulated it can be a powerful tool to support creators, enhance their skills, and contribute to cultural diversity objectives.
- Film agencies' role has always been to **accompany changes in the sector and embrace technological innovation**. Film agencies support all genres and formats, tracking the evolution of audiovisual creation, including XR, VR, video games and YouTube creators in certain countries. AI will change the way audiovisual works are created, produced, distributed, exploited and promoted. It impacts the entire artistic, creative process, the workforce and jobs, training and skills, authors' rights and remuneration, planning, development, production/post-production, distribution/audience development, as well as the discoverability of works.
- AI is perceived by film agencies **as a technological development that entails both opportunities and challenges**. AI offers an opportunity for funding agencies to improve the management of their internal work and procedures including the processing of applications which will be welcomed by their users. AI provides a significant opportunity for public institutions to develop far more efficient and effective processes for managing operational matters, such as for applications for funding that are based on objective criteria – for example, subsidy support and incentives which are automatic and for which the gateway is qualification as a national work.
- Additionally AI tools will be of great value in mining the huge potential of national archives as a source of rich data which needs to be controlled and managed carefully.
- Film agencies already help AI-supported content or AI projects and some of them already use some of the AI instruments to facilitate their own tasks (ex. Managing

applications for automatic support, assessing sales estimates, and managing film archives). For instance, regarding those works which are publicly owned in national archives for the moving image, there is a significant opportunity for public institutions to use AI to collect rich datasets for cultural and educational purposes - so long as they ensure that such processes never violate copyright (and the underlying rights) in any works which are owned by commercial entities and/or in which creators have rights.

- There can be a **positive contribution** from AI technologies in **saving time and money** and contributing to **sustainability** objectives. EFAD recognises that given the largely “borderless” nature of AI as a technology, the opportunities and challenges also need to be considered from a global perspective.

Public funding and AI supported content

- As a matter of public policy, it is reasonable and responsible to establish basic transparency requirements on all users of public funding which means not just funds granted by funding agencies but also those who avail themselves of various public incentive schemes to support production. Indeed, these transparency requirements should apply towards all audiovisual works made available in Europe.
- We recommend that film and audiovisual agencies collect information on the use of AI technologies by projects and works that receive public funding. Public support applicants and beneficiaries should be requested to tell about the project's engagement with artificial intelligence. This approach should also be followed by European funding programmes, as recommended by the European Parliament in its resolution of 16 January 2024 on the implementation of the Creative Europe Programme 2021-2027¹ or the SAA.²
- This collection of information has already started within EFAD members:
 - I. As of 1 October 2023, every applicant to support the Flanders Audiovisual Fund (**VAF**) will have the obligation to answer a questionnaire concerning the use of artificial intelligence technology³: has AI been used for the project; which tool was used; what is the reason behind this use; if copyright and/or IP were taken into account while deciding to use AI; if within the company there is the possibility for people to refuse to have their intellectual property used for AI tools; whether they are aware that AI applications can lead to reinforcement of stereotypes, clichés and unconscious bias.

¹ “calls on the Commission, in this regard, to ensure that both applicants and beneficiaries provide information relating to the use of AI in projects, including in the production, distribution and promotion of creative works, in order to assess this emerging trend in the cultural and creative sectors and its impact on the programme” (point 14), https://www.europarl.europa.eu/doceo/document/TA-9-2024-0008_EN.html

² “Film funds financially supporting the production of films and audiovisual programmes should also be entitled to know about the use of AI in the financed productions”, see page 5 of <https://www.saa-authors.eu/en/news/848-saa-position-paper-ai-must-serve-society-and-enhance-human-creativity>

³ <https://www.vaf.be/over-de-sector/data/artificiele-intelligentie>

- II. In the UK, the BFI has added AI-related questions to all its application forms inspired by the VAF one (see in annex) and in Austria, a question has also been introduced by the Austrian Film Institute in applications for scriptwriting support.
 - III. The BFI is developing a survey for members of its Screen Sector Task Force, to enhance its understanding of what the sector sees as the opportunities and challenges of AI. This, in turn, will help inform policy-making.
- The VAF questionnaire has already served as a source of inspiration for other EFAD members and the **Council of Europe** (in the TV series pilot project) where it is mandatory to respond. We encourage Creative Europe-Media to uptake it as well.
 - Film Funds remain attached to **human creation and authored works**. One of their challenges is to define up to which proportion of AI intervention a work can still be considered a human creation that can be copyrighted and eligible for public support. Should the informed consent of authors & performers be considered an eligibility criteria for public support? In a specific production, to what extent some of the creative and technical posts can be supported by AI, or should they be occupied by a physical person? What constitutes an eligible expenditure in relation to the use of AI, especially Generative AI, with regard also to fiscal incentives schemes?

Transparency obligations on AI systems

- EFAD welcomes the adoption of the AI Act making the EU the first area in the world to have a comprehensive piece of regulation governing AI including provisions on the respect of EU copyright law and transparency requirements. We would like to see the introduction of similar legislation outside the EU/EEA, notably across Europe as a whole.
- EFAD supports the call from the creative sectors for transparency requirements **on training data and artificially generated content to provide guarantees to citizens, authors, and performers that their rights are respected**. For instance, we must guard at all times against the unauthorized use of Large Language Models (LLMs) to collect data from both new and archive works in violation of all forms of copyright.
- **Input:** knowing how these systems are trained is crucial ie which data sets were used. The AI Act introduces an obligation to make publicly available a sufficiently **detailed summary** of the content used for training of the general-purpose AI model⁴. A template will be provided by the **AI Office** - a new body created within the European Commission to centralize the enforcement of these rules- in 2025 for the new AI models and in 2027 for the already existing ones) and enforce these

⁴ The text only concerns those AI systems: generative AI models that are released on the market (proprietary ones, R&D and prototyping activities ahead of releasing on the market are out of scope). These are AI which are capable of performing a wide range of distinct tasks. AI systems may not subject to such an obligation. In practical terms it means GPT-3 or GPT-4 will have to publish such a summary but Chat GPT appears not be subject to it.

rules. In addition, a **Code of Practice** will have to be developed within 9 months after the entry into force of the text by the industry (AI providers, national competent authorities, and stakeholders), in a co-regulatory approach. The code should include copyright issues. If the Commission is not satisfied, it will adopt an implementing act.

- From an EFAD perspective, it is key to make sure that this template allows stakeholders to get enough details, in particular as regards the list of copyright-protected works that are used for training purposes.
 - EFAD calls on the EU institutions to make sure that audiovisual rightsholders are properly involved and consulted in the implementation phase.
- **Output:** the AI Act introduces an obligation for AI providers to disclose that the content has been artificially created or manipulated (deepfakes). For artistic works, the labelling should be done “in an appropriate manner that does not hamper the display or enjoyment of the work, including its normal exploitation and use, while maintaining the utility and quality of the work”.
 - From an EFAD perspective, this can be achieved by clear labelling on the opening credits. In addition, details should be contained in the records supporting the production and available to interested parties.
 - To get a better understanding of the market evolution, transparency on AI-generated content is also needed via technical means, for example via metadata or watermarking.

Respecting IP Rights and Obligations

- Ensuring full respect for IP rights and obligations is another fundamental principle for EFAD members. Whether this can be ensured within the context of present legal frameworks operative in Europe, notably that in the EU, is a matter of some debate.
- Regarding the **Text and Data Mining** (TDM) Exception of the Article 4 of the 2019 EU Copyright Directive EFAD shares the view of authors and performers who are calling for a thorough analysis of the applicability of the current legal framework to Generative AI. This exception was discussed and adopted before Generative AI existed.
- Should the TDM exception apply, the question is how the **opt out** – ie the possibility to refuse that an audiovisual work is used by AI - can be put in place efficiently. AI is another form of exploitation, and fair, unwaivable and proportionate **remuneration** cannot be optional – it is and must remain a requirement. Solutions can be found to make this happen whether contractual or through collective agreements and mechanisms.

Preservation of Cultural Diversity

- The principle of Cultural Diversity is a fundamental and core value for all EFAD members. It is enshrined in UNESCO Convention on the Protection and Promotion

of the Diversity of Cultural Expressions to which all 36 countries represented in EFAD are party, as well as in the EU Treaty as a core tenet of EU policy. It is crucial to ensure that AI use does not undermine cultural diversity and the funding mechanisms we use across Europe.

- Care must be taken to ensure that training systems on the input side reflect the diversity of European productions. At present available AI systems tend towards reliance on US works. The risk of a trend toward homogenization is clear – and would put in jeopardy our cultural diversity.
- Cultural diversity stems from the variety of people and enterprises creating works, notably independently. We must strive for cultural policies preserving this variety and independence.

Annex template questionnaire

About EFAD

EFAD (European Film Agency Directors association) is the voice of national European Film Agencies, bringing together national film and audiovisual centres from European countries. EFAD membership covers the European Union countries as well as Bosnia and Herzegovina, Iceland, Norway, the Republic of North Macedonia, Montenegro, Serbia, Switzerland, Ukraine and the United Kingdom.