

# AI and Copyright

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## EU “AI for Europe [COM(2018) 237 final, 25.04.2018]

... increase investments in AI (Horizon 2020, attract private investment),

... make more data available and more data sharing (deep-learning algorithms need the use of large data sets); industrial data-platforms offering high quality data sets;

... ensure an appropriate ethical and legal framework (but copyright is not even mentioned!),

...create a multi-stakeholder platform (European AI Alliance) “to share best practices, encourage private investments and activities related to the development of AI”; an AI-on-demand platform to give support and easy access to “the latest algorithms and expertise” by users and businesses; AI innovation hubs to facilitate testing and experimentation;

**in order to “place the power of AI at the service of human progress.”**

**Are © laws prepared to meet this challenge?**

## “STRONG” AI

Algorithms that think, make decisions, solve problems and learn

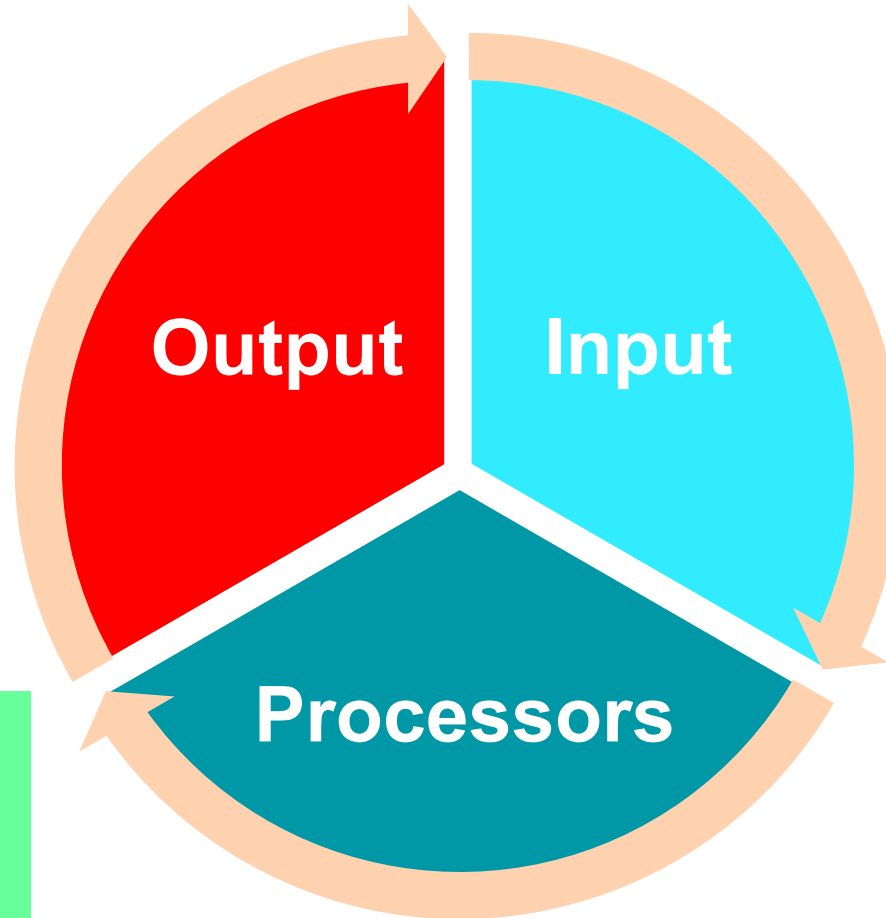
**Deep learning / neural networks**



## “Weak” AI

“Trained” algorithms to solve real-life problems and produce information that may be crucial for the advancement of science, culture, society

# AI projects



- New Datasets
- Compilations
- Translations

...  
**Derivative works?**  
 (who owns AI outputs?)

- Open or “Locked”
- DRM
- PSI

- Works
- Performances
- Recordings
- Data (unprotected)
- Datasets
- Works in public domain
- Digital or Digitized
- Open or “Locked”
- DRM

→ “Treated” (tagged)

- E&L? Art.5.1 ISD
- No E&L for AI
- If any ... DRM
- No fair use?

- Licensed (EULAs)
- CMOs licensing
- Open licensing
- “Conditions of use”

- Software protected by ©
- Functional algorithms?
- Databases

→ Art.5.6.7 CPD : Mandatory exceptions

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- “Terms of service”

## COMPUTER PROGRAMS

### E&L: Art.5-6 CPD

For “lawful user” (mandatory)

- Load, run, correct (\* rec 13)
- Back-up copy
- Reverse-engineering
- Decompilation (interoperability with other software and hardware)

### DRM: Art.7.1 CPD

- Putting into circulation & Possession for commercial purposes, with knowledge, infringing copies
- PIC or PCP any means “solely” intended to remove or circumvent any “**technical device**” protecting a computer program

### “interface” DRM / E&L: Art.5-6 CPD

For “lawful user”:

- Load, run, correct (\* rec 13)
- Back-up copy
- Reverse-engineering
- Decompilation (interoperability with other software and hardware)

**Mandatory (cannot be contracted-out)**

## WORKS / Subject Matter / sui generis

### E&L: Art.5 ISD

Art.5.1 – temporary copying (mandatory)

Optional for MS (poorly harmonized)

No E&L for AI // No Fair use

Art.3 Proposed Dir. CDSM (TDM for scientific research, not retained..., lawful access, DRM)

Art.3a (optional) TDM for other purposes

### DRM: Art.6 ISD

**TPM: Control access & copying**

- Art.6.1: Circumvention, with knowledge
- Art.6.2: Preparatory activities... advertised, used or aimed at circumvention (rec.48: proportionality)

### “interface” DRM/ E&L: Art.6(4) ISD

- Voluntary measures by Rightholder
- In absence: appropriate measures adopted by MS ... only for 7 E&L! → arbitration, jurisdiction, etc.
- Art.6(4)4 Not applied to copies “on demand”

Art.3 Proposed CDSM: lawful access + DRM

Art.6 Proposed CDSM = no contract-out + Art.6(4) ISD but Art.6(4).4 does not apply (copies on demand)



## LICENSING NEEDED for AI

### Software

**Free software licensing (GPL) prohibits the use of TPM ... but Enforcement ! ... and copyleft!** Google AI - Apache license  
EU recommends EUPL (open source, no copyleft)

### Works and Datasets

**Open licensing (CC) ... SA, NC, ND do not favor reuse / investment**

**For PSI: EU COM recommends CC0 (flexibility, interoperability)**

*'Guidelines on recommended standard licences, datasets and charging for the reuse of documents' (2014/C 240/01)*

### Problems with Licensing

→ **Need to reuse AI results** (derivative works)

→ **Interoperability** (if any! EULAs!)

→ **Unequal opportunities for market agents ...**

Big tech companies license inputs (training data) from end-users – “terms of service”  
competitive advantage over other (start-ups) (EU AI initiative: platforms, best practices)

## What have we learned?

### Copyright will play a decisive role in AI markets (services and products)

Bottom-up (best practices) ... open licensing by business, by governments, etc  
... **licensing is insufficient**, unpredictable and complex (interoperability)

© laws should find the “right” solution for AI (meet needs)

... in order to “**place the power of AI at the service of human progress.**”

### One solution? E&L (with strong “interface” with DRM) or statutory licenses

*If we really want to incentivize machine reading of expressive works and datasets... © law should provide for strong, clear E&L (or statutory licensing), safeguarded from DRMs and contracts.*

*So far, it does not look promising.*

### Another solution?

“**Copyright ignores robots**” (Grimmelman)

*(as a criticism: romantic authorship ... romantic readers!)*

... is “machine reading” an act of exploitation? (has *reading* ever been?)

... “exploit work as a work” (Strowel)!

... AG in *Cordoba* ... in favor of a “restrictive” reading of exclusive rights!



Other deterrents, in addition to © : **Personal Data (GDPR)**

**Reuse of PSI** (AI initiative) → obligation to safeguard © and personal data protection/privacy

**“safeguarding” is not enough** to incentivize PSI reuse / AI initiatives

Need to *exempt* specific machine reading uses of **works/personal data**... which do not have a negative impact on the protection of these interests? ... which ones?

Law should do more to encourage AI (and PSI)  
... and do it coherently!





**WE ACCEPT THE TERMS AND CONDITIONS OF PRIVACY**

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R&I

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UOC

# Thanks!

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