If EU copyright and AI rules conflict over territoriality, can a fix be found?

By **Inbar Preiss,** senior intellectual property correspondent, MLex

June 19, 2025

The EU's AI Act creates legal uncertainty by attempting to apply EU copyright rules to AI model training conducted outside the bloc, which clashes with the territorial nature of existing copyright law, according to a new report published by Brussels think tank the Lisbon Council. It coincides with a joint industry letter from creative organizations urging EU lawmakers to strengthen safeguards against the unauthorized use of copyrighted works in generative AI.

The EU's Artificial Intelligence Act risks creating a legally fraught and unenforceable gap between AI regulation and existing copyright rules, particularly when it comes to training data sourced from outside the EU, according to an analysis published today by the Lisbon Council, a Brussels-based think tank.

One solution would be for legislators to remove a controversial recital in the AI Act that implicates contradictory copyright rules, according to the professor behind the report.

This attempt at extraterritorial reach — especially when grounded in a non-binding recital in the AI Act — risks complicating enforcement and delivering little tangible benefit to rights holders, according to the report (see here), while also clashing with the territorial nature of the EU's Copyright Directive, which regulates copyright based on where the activity occurs.

The potential extraterritorial application of the AI Act to copyright "is incredibly unclear and consequential in practice," João Pedro Quintais, Associate Professor at the University of Amsterdam, who authored the report, told MLex. The Lisbon Council noted that its research received support from Meta Platforms and Google, both AI developers.

Hard on the report's heels, about a dozen creative industry groups — including writers, musicians and performers — have urged EU lawmakers to take a tougher stance on AI's use of copyrighted material.

In a joint letter to the European Parliament's Legal Affairs Committee sent today (see here), the signatories warned that generative AI models are already exploiting protected works and called for stronger safeguards in the upcoming parliamentary report on copyright and AI. They argue that current text and data mining, or TDM, exceptions were never designed for this scale of use.

The publications come as the European Commission is managing a tumultuous implementation of the AI Act and preparing to review the 2019 Copyright Directive next year. In the meantime, frictions are growing between right holders and AI platforms over the use of copyrighted works as reflected in growing litigation.

Extraterritorial gap

At the crux of the issue is Recital 106 of the AI Act, which implies that providers of general-purpose AI models must comply with EU copyright rules even if their model training activities took place entirely outside the bloc.

The recital is intended to prevent regulatory arbitrage by ensuring a level playing field for AI developers in the EU market, but according to Quintais, it introduces more confusion than clarity.

From a legal perspective, copyright is governed by territoriality, meaning the laws that apply are those of the country where the activity takes place. If an AI model is trained abroad, that training would be subject to local copyright rules, not EU ones — even if the resulting model is later released in the European market.

“That's simply not how copyright law works,” Quintas told MLex. Because of this, he said, a model trained abroad would not need to comply with EU copyright rules relevant to the training phase, such as text and data mining, or TDM, opt-out obligations. Still, the AI Act makes respecting copyright rules a de facto market entry requirement, a characteristics of such product safety legislation in the EU.

“In practice, the provider would only need to comply with EU copyright rules that apply to the model itself and its subsequent uses,” he said.

Another key challenge is the issue of lawful access, which determines whether a developer had the right to use certain data in the first place.

“If your text and data mining activity is sufficiently located in the EU to trigger the application of EU law, you then have to establish that you lawfully accessed the content used to train your model, which is of particular relevance for freely content publicly available that is subject to web scraping by commercial providers,” Quintas said.

Legislative solutions
To address these issues, Quintais sees two possible avenues for EU lawmakers.

“If policy makers read this report and decide this extraterritoriality reference in the AI Act is just too complicated and creates unnecessary legal uncertainty, one solution would be to get rid of the recital in future legislative simplification efforts,” he said.

Alternatively, the commission could provide clarification in a non-binding format, such as through forthcoming guidelines or communications related to the implementation of the AI Act.

Another soft law instrument currently under development is the code of practice on general-purpose AI, which will provide voluntary standards for providers. Earlier drafts of the code had gestured toward extraterritorial obligations, but references to Recital 106 have since been removed.

“Given the legal uncertainty surrounding extraterritoriality and the existing challenges facing the code of practice, it seems prudent that the drafters chose not to take a position on the issue,” Quintais said.

Clarity from courts
Legal clarity may ultimately come from the EU Court of Justice, which is expected to interpret key aspects of the TDM exceptions in Article 4 of the Copyright Directive. These include questions about what constitutes an adequate opt-out and what legal standard should apply to TDM-related uses of publicly available online content.

“What the court might clarify in the upcoming cases are different aspects of the TDM exceptions — such as what constitutes an adequate opt-out,” Quintais said.

Several national cases have already begun to test these questions.

In Germany, Kneschke v. LAION focused on whether opt-outs were properly implemented during AI training. In the Netherlands, a ruling in DPG Media et al. v. HowardsHome addressed the intersection of press publishers’ rights and TDM.

Most recently, a Hungarian court has referred questions to the EU Court of Justice in a case brought by publisher Like Company against Google, which will test whether the generation and display of chatbot outputs falls within the scope of Article 4.

While the Lisbon Council report stops short of calling for direct legislative changes, it warns that misalignment between public law instruments like the AI Act and private law systems like copyright risks muddying the legal certainty. “We need to be clear about what the current law is before trying to change it or improve it,” Quintais said.

Please email editors@mlex.com to contact the editorial staff regarding this story, or to submit the names of lawyers and advisers.