Artificial intelligence and music

ECSA's viewpoint

The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 27 European countries. With more than 60-member organisations across Europe, the Alliance speaks for the interests of music creators of art and classical music (contemporary), film and audiovisual music, as well as popular music. The main objective of the Alliance is to defend and promote the rights of authors of music at the national, European and international levels and improve social and economic development of music creation in Europe.

Introduction

As various different international and European institutions reflect on the opportunities, risks and challenges raised by Artificial Intelligence (AI) and as the music sector is increasingly using AI related technologies in various ways, ECSA wishes to contribute to the ongoing debates with this position paper. The reflections outlined below focus on the use of AI in the music sector and generally supports a human centric approach of AI, based on the respect for fundamental rights (in particular the right to property) and essential EU values (in particular cultural diversity) which should be at the heart of further policy initiatives.

Artificial intelligence (AI) can be defined as the ability of a computer to perform tasks commonly associated with human intelligence. The European Commission's White Paper defines "AI (as) a collection of technologies that combine data, algorithms and computing power" and states that "AI is one of the most important applications of the data economy". Indeed, today's AI music applications can only produce outputs if they have received human inputs (or data) and been trained – by human intelligence – to analyze and use such input. As a result, the questions regarding AI are intricately linked to the issues regarding the ownership and use of data and the role of platforms in the digital economy. With the White Paper on AI, the European strategy for data and the forthcoming Digital Services Act, we welcome the fact that the European Commission is looking at those three related topics in parallel since they are interlinked and paramount for a fair and sustainable digital economy.

In music, AI is being used at various stages from the creation to the production and distribution of music.

Musical creations at the heart of AI applications and at the service of music authors

At the music creation's stage, our members are often using and embracing AI technologies to enrich and support the creation of their musical works. Those AI applications are based on human creative input that "feed" the machine and are helpful instruments at the service of composers and songwriters. As a result, there is no such thing as entirely "AI generated" music but rather "AI assisted" music which always require human creativity, either to feed the machine or to use the AI application. Clarity is therefore needed regarding the terminology used and we would caution against the use of terms such as "AI generated content" and "data", which can be misleading or excessively broad. From a copyright perspective, it is crystal clear that human creativity is at the origin of those "AI assisted" works and that music creators are and remain their sole authors.

As a result, while the question regarding the originality and ownership of creative works entirely generated by AI can be valuable from an academic perspective, it seems premature to

elaborate on the copyright related questions that would arise in case a work is entirely created by a AI machine with no human input. In that regard, we understand that the lack of focus on IP matters in the EC's White Paper shows that the EC does not see an immediate need to regulate that specific area, not considered as "high risk".

Regarding the copyrighted works which can "feed" AI applications, we note that the 2019 Copyright Directive provides for exceptions (Article 3) for "text and data mining" that can be used to feed AI applications for non-commercial purposes, to the benefit of research organisations and cultural heritage institutions when they have lawful access. Article 4 also allows for a copyright exception for text and data mining of the protected works that are lawfully made available to the public but provides that rightholders can reserve their right to provide licences for such uses.

We consider that those rules provide an adequate balance to favor the development of AI while making sure that creators' works are not used at their expense for commercial purposes by commercial operators. As a result, we would caution against any new exception and we consider it is crucial that Member States ensure that music authors can get revenues from the use of their works (through licenses or other schemes) when those works are used for AI commercial purposes.

It is also paramount to ensure a high level of transparency for all right holders, including music creators, when copyrights works are fed into an AI application, not only to avoid misappropriation of creativity and the respect of authors' moral rights but also to inform citizens about the use of original works by AI applications. Music creations should not feed AI systems without the knowledge nor remuneration of music creators.

In that regard, Article 19 of the EU Copyright Directive (Transparency obligation) should also apply when authors' contractual counterparts allow for the use of authors' works, including when sublicences make use of those works though AI applications.

In any event, we believe that European policy makers should focus mainly on how AI can be used at the service of fundamental rights and to promote cultural diversity.

AI at the service of fundamental rights and cultural diversity

AI is also widely used by streaming services such as Spotify or Netflix and by online content sharing service providers such as YouTube. Those services – which are most often dominant on their markets – are using algorithms based on AI to recommend music to users, notably through playlists. Those algorithms are one of the main tools to maximize revenues in favor of major streaming platforms and one of the main avenues for European citizens to watch or listen to online. As a result, AI assisted playlists have now a huge importance on the success and careers of European music authors.

When major streaming services engage in both their own content production and the distribution of third-party content (such as Netflix) there is an inherent risk that their algorithms favor their own content to maximize revenues. In the same vein, music streaming services often act as gate keepers and tend to favor certain content on which they make more profit. As a matter of example, there has been a controversy in recent years about "fake artists" promoted by Epidemic Sound and being placed in major Spotify playlists. The fact that a single investor financially supports both Spotify (streaming service) and Epidemic (acting as a rightholder with a "cheaper" catalogue) shows the inherent risks of discrimination that can arise from dominant streaming services. The fact that Spotify is now contesting the fact that Apple

would favor its own service also demonstrates the need for common and non-discriminatory rules to prevent abusive behavior by all digital services.

Such practices call for a high level of transparency and accountability as well as for serious public authorities' scrutiny when it comes to data usage and the use of AI powered algorithms, in particular from dominant streaming services. Most often, right holders are in the dark and do not receive sufficient information on data uses and on the role of AI algorithms for those uses.

The high level of concentration in the music sector (with only three major labels) is also a matter of concern since playlists are often featuring in priority the three major's Anglo-American repertoires at the expense of more culturally diverse music. Instead of favoring certain repertoire and promoting a "filter bubble" effect, AI powered algorithms should help citizens finding more diverse content. EU institutions and Member States have a role to play to ensure that cultural diversity and pluralism can flourish on digital platforms with rules that guarantee the visibility and discoverability of a diverse music repertoire. AI powered algorithms should be subject to fair, transparent, and non-discriminatory rules to prevent discrimination between large and small repertoire owners and promote the diversity of European cultures.

As a matter of comparison, Article 13 of the Audiovisual Media Services Directive rightly strengthens the promotion of cultural diversity, by introducing clear obligations for on-demand audiovisual services to have at least a 30% share of European content in their catalogue and to ensure the prominence of this content. We welcome such a rule and we encourage similar measures to ensure the promotion of European music on music streaming services.

AI can also be used to create deep fakes and various imitations of copyright protected works – which most often constitute copyright infringements. As the technology used to make deep fakes is becoming more sophisticated and very affordable, it has a growing and detrimental impact on our members' economic and moral rights but also on all authors and performers worldwide. We encourage EU and national authorities to take appropriate measures to stop this misappropriation of rights. In times of fake news, hoaxes, disinformation for entertainment or political purposes, moral rights, including the right of attribution and the right to integrity are more important than ever and should be fully upheld and defended rather than ignored.

In this regard, we note that AI can also be helpful to identify those copyright infringement as well as other infringements that can occur online. AI can efficiently be used to ensure to identify works and make sure authors are properly remunerated for the use of their works. In that regard, it is of utmost importance that AI related technologies can contribute to the effective application of Article 17 of the Copyright Directive. This provision should not be affected by the forthcoming EU initiatives, and in particular by the forthcoming Digital Services Act.

Conclusion

In conclusion, we note that, as any other technology, AI can be used with harmful purposes but can also have a positive role to play to enforce fundamental rights and promote diversity. Public authorities should not be afraid to regulate the use of AI by digital platforms to preserve fundamental rights. This is the only way for the EU to promote trust in AI while preserving its fundamental human values.