Copyright law in European Union law and artificial intelligence in a transnational perspective

Derecho de autor en Unión Europea e inteligencia artificial en un enforque transfronterizo

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Abstract: This article analyzes the complex interplay between European Union copyright law, the AI Act, and Private International Law. It examines the conflict between the EU's ambition to set global AI standards (the "Brussels Effect") and the principle of territoriality governing copyright, which creates legal uncertainty for AI developers operating outside the EU. The analysis focuses on the application of the Rome II and Brussels I bis regulations to determine applicable law and jurisdiction in cross-border infringement cases. Key issues include the enforceability of the TDM "opt-out" mechanism and the unresolved legal status of AI-generated works, highlighting a volatile legal landscape that will likely be shaped by future high-stakes litigation.
Keywords: AI Act, Copyright, Private International Law, Territoriality.

Resumen: Este artículo analiza la compleja interacción entre la legislación de la Unión Eueopea en materia de derecho de autor, el reglamento europeo sobre la IA y el Derecho internacional privado. La contribución se concentra sobre el conflicto entre la ambición de la UE de establecer normas mundiales en materia de IA (el "efecto Bruselas") y el principio de territorialidad que rige los derechos de autor, lo que crea incertidumbre jurídica para los desarrolladores de IA que operan fuera de la UE. El análisis se enfoque en la aplicación de los reglamentos Roma II y Bruselas I bis para determinar la legislación aplicable y la jurisdicción en los casos de infracción transfronteriza. Entre las cuestiones clave se incluyen la aplicabilidad del mecanismo de «exclusión voluntaria» del TDM y la situación jurídica sin resolver de las obras generadas por IA, lo que pone de relieve un panorama jurídico volátil que probablemente se verá condicionado por futuros litigios de gran envergadura.
Palabras clave: reglamento europeo sobre la IA, derecho de autor, derecho internacional privado, territorialidad.

I. Introduction

1. The development of generative AI presents the European Union with a fundamental legal trilemma, in that it requires trading off three conflicting objectives that are likely to be antagonistic[1]. On

[1] The present contribution finds its roots in the lectures held during the 2025 IISS-EAPIL Winter School in European Private International Law, which the Author attended to.

the one hand, the EU must promote AI innovation, which is largely based on access to large data sets. On the other hand, it must protect the rights and the economic profit of the authors whose works constitute those data sets. Third, it struggles with the problem of applying territorially delimited copyright law to the border-transcending reality of AI creation and use. This inherent tension is not static, it is highly dynamic because the base AI technology and the market itself are in transition so rapidly. This instability creates a state of high commercial and legal risk for all players in the market[2].

II. Directive CDSM

2. Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market[3] (the CDSM Directive) is a landmark in EU copyright law, molding it to fit the needs of the digital age. Its most progressive and novel aspect is that it introduces an express legal framework for text and data mining (TDM). The creation of advanced AI models, such as those used to generate text or images, is based on the automatic analysis of large data sets, most of which are protected by copyright. Its main objective is to modernize regulations and to reduce legal fragmentation in the digital single market. The directive entered into force on May 17, 2019, and Member States were required to implement (transpose) its provisions into national law by June 7, 2021. From a technical point of view, the TDM process requires the creation of temporary copies of these works, which is a fundamental rule that would normally infringe on the creator's copyright monopoly and require their consent[4]. TDM regulation uses two basic exceptions to copyright monopoly, set out in Articles 3 and 4. Article 3 is devoted to scientific purposes. It allows institutional research bodies, such as universities or libraries, to freely conduct data investigations on works to which they have legal access (e.g., through subscriptions to scientific journals). Furthermore, this right cannot be restricted by contract. This means that publishers cannot take any action to prohibit scientific institutions from analyzing materials that they have made legally available to them. This guarantees freedom of scientific research in the digital age, ensuring that modern analytical methods can be used without fear of infringing copyright. Article 4 creates a general exception to allow TDM by any party, including tech firms training commercial AI models. The underlying requirement, just like with scientific research, is to have legal access to materials under analysis. Article 4 introduces, however, an important balancing mechanism, the so-called opt-out right. Its owner (e.g., artist, publisher, news website) can make it clearly express in a machine-understandable way (e.g., in a metadata or robots.txt file) that they do not consent to their content being searched. Without such an opt-out, TDM is permitted. In practice, this provides a default permission to study data for AI uses, but allows creators an easy way to safeguard their works if they wish to do so.

3. There are two competing opinions on the topic. On the one hand, a new study by the European Parliament[5] forms the opinion that the mass training of AI overwhelmingly goes beyond the domain of TDM exceptions as they were meant to be. It highlights that the opt-out regime is second-best, inappropriately burdens copyright holders and does not provide for consent or remuneration schemes and calls for

In accordance with editorial requirements, the author wishes to point out that the sources analyzed in this study are normative in nature and are formulated in a gender-neutral manner. For this reason, a detailed analysis of the impact of gender on these technical and legal regulations is beyond the scope of this article.

[2] M. Trimble, "The Multiplicity of Copyright Laws on the Internet", *Fordham Intellectual Property, Media and Entertainment Law Journal*, n. 2, 2015, pp. 372-373; European Commission, "Explanatory Notice and Template for the Public Summary of Training Content for general-purpose AI models required by Article 53 (1)(d) of Regulation (EU) 2024/1689 (AI Act)", 24 July 2025, available at: https://ec.europa.eu/newsroom/dae/redirection/document/118480.

[3] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *OJ* L 130*,* 17 May 2019, pp. 23-24.

[4] T. Margoni/M. Kretschmer, "A Deeper Look into the EU Text and Data Mining Exceptions: Harmonisation, Data Ownership, and the Future of Technology", *GRUR International*, n. 8, 2022, pp. 685-687.

[5] N. Lucchi, *"*Generative AI and Copyright - Training, Creation, Regulation"*,* Study for the European Parliament's Committee on Legal Affairs, European Parliament, Brussels, July 2025, pp. 10-11, 41-44, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU(2025)774095_EN.pdf.

a transition to an opt-in regime[6]. On the other hand, other stakeholders argue that the current system gets an enlightened, sensible balance of interests in promoting innovation while reserving control for rights holders[7]. In practice, as awareness grows, more and more copyright holders are embracing opt-out schemes, limiting the pool of available training data and tipping the market towards licensing agreements[8].

4. The final effect of Article 4 TDM is not the opening of a significant, free pool of training data, but to act as a legal lever that pushes the development of collective licensing markets. The opt-out possibility essentially becomes a licensing signal. AI developers may have first interpreted Article 4 as a general permission to collect data unless expressly prohibited. Yet the real-world functioning of opt-out mechanisms, while anarchic, is increasingly common as copyright holders become more aware. The effect is that it is lowering the usefulness of the exception itself, and the default status of data shifts from "open" to "proprietary". For a developer, the cost and legal uncertainty of ascertaining the opt-out status of each piece of data in a petabyte-scale collection becomes unbearable. Accordingly, the TDM exception, by creating a mechanism through which copyright holders can express their intentions, actually creates the necessary legal friction to nudge AI developers into seeking broad, collective licenses from rights management organizations. This becomes the more convenient and legally safe pathway. The main aim of the exception is therefore not to enable free data mining, but to shape the future licensing market[9].

III. New regulatory of AI act

5. With the advent of Regulation (EU) 2024/1689, the AI Act, the EU is enacting a new degree of regulation that directly targets artificial intelligence technology developers. The provision, a public law act, not only legislates for regulation on placing AI systems on the market, but also imposes clear and enforceable copyright obligations on producers of general-purpose AI models (GPAIs), such as large language models e.g. GPT, Claude. Predominant here are the provisions of Article 53, which significantly complement the existing legal framework thus far established by the CDSM Directive. The key requirement of this new regulation obligates GPAI model providers to adopt internal policies that guarantee respect for EU copyright law. This fundamentally changes the nature of compliance; it is no longer just a matter of avoiding private civil lawsuits for infringement, but has become a public law requirement for market access. Companies who are actually training their models are now being required to actively prove that they possess processes which identify and honor these opt-outs[10].

6. The second necessary element is Article 53(1)(d), which imposes a transparency obligation on the providers. They must prepare and publish a sufficiently detailed summary of the material used to train the model. There are two reasons for this provision. First, it is so that creators and rights holders can verify whether their works are included in the training set. Second, as a direct consequence, it provides them with an operative means of ascertaining if their "opt-out" requests have been duly observed. This obligation brings an end to the period when the "ingredients" of AI models were a trade secret closely guarded, and the way is paved for enhanced control and enforcement of rights by creators.

[6] N. Lucchi, *op. cit.*, pp. 58.

[7] N. Lucchi, *op. cit.*, pp. 31-32.

[8] J. P. Quintais, "Generative AI, Copyright and the AI Act", *Kluwer Copyright Blog*, available at: https://legalblogs.wolterskluwer.com/copyright-blog/generative-ai-copyright-and-the-ai-act/.

[9] European Union Intellectual Property Office (EUIPO), "The Development of Generative Artificial Intelligence from a Copyright Perspective", Alicante, 2025, pp. 164-167.

[10] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 March 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), *OJ* L*,* 12 April 2024, pp. 144 ff.

IV. Determining jurisdiction under the Brussels I bis Regulation

7. In cross-border commercial and civil cases, the determination of jurisdiction is regulated in the European Union by Regulation (EU) No. 1215/2012, commonly called Brussels I bis[11]. It is a key instrument of private international law that defines the jurisdiction of the courts of a Member State. The Regulation establishes a clear general rule in Article 4, where defendants should be sued before the courts of the Member State where they are domiciled. This principle ensures predictability and protects the defendant. However, this rule primarily applies to defendants domiciled within the EU. For defendants domiciled outside the EU, such as a company in the US, the jurisdiction of a Member State's courts is determined by the national law of that Member State. The Regulation also provides for important alternative rules to the general provision, creating what is known as special jurisdiction[12]. One of the most significant, laid out in Article 7(2), concerns cases of tort, including copyright infringement[13]. According to a long-standing interpretation by the Court of Justice of the European Union (CJEU), originating from the landmark *Bier* case[14], the phrase "place where the harmful event occurred or may occur" gives the claimant a choice between two distinct courts. They can bring an action either before the courts of the place where the event giving rise to the damage occurred (the causal event) or before the courts of the place where the damage itself was suffered. This gives the injured parties a strategic advantage, allowing them to choose the court in the place where they felt the negative consequences of the infringement, which is often more convenient and efficient for them[15].

8. The phrasing "the place where the harmful event took place" of Article 7(2) Brussels I bis Regulation, though concise, in practice has generated a significant amount of uncertainty, especially when infringements have a global reach, as with those on the internet. In response to such challenges, the CJEU has, in its case law, developed a clear interpretation of this provision, granting the claimant (usually: the aggrieved party) a strategic choice between alternative courts. The first is to bring an action in the territory where the casual event took place. For matters pertaining to the training of AI models, this would most likely be the place where the developer performed the machine learning process, normally its place of registered office. Its main advantage is the full jurisdiction of the court. This means that this court has jurisdiction to decide on the entirety of the damage sustained by the claimant notwithstanding the place where the harm or a part thereof was suffered. This allows the claimant to seek full compensation in a single legal action.

9. The second option allows filing a suit against the infringer in the place where the negative effects of his action have been felt. In the case of online copyright violations, such a location is the jurisdiction of each Member State where the unlawful content became accessible to the public. However, this option is saddled with a heavy limitation: the court within a specific State only has jurisdiction over the damage that was suffered within the jurisdiction of that State. This is what leads to the creation of the so-called jurisdictional "mosaic" principle. A creator who wished to receive full compensation would have to file several suits in each State, which, as with the case of governing law, complicates and incurs more expenses in bringing claims[16].

10. While the "mosaic" principle creates significant hurdles, the Brussels I bis does offer other mechanisms aimed at procedural economy and the consolidation of claims. For instance, Article 8(1)

[11] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), *OJ* L 351, 20 December 2012, p. 1.

[12] B. Rebero - Van Houtert, "Jurisdiction in cross-border copyright infringement cases: rethinking the approach of the Court of Justice of the European Union", Doctoral Thesis, Maastricht University, 2020, pp. 140-143.

[13] Authorities confirming this, making clear the distinction with article 24(4).

[14] CJEU 30 November 1976, *Bier*, 21/76, ECR 1976, p. 1735.

[15] G. G. Georgescu/P. M. Marin/D. Vasile, "Jurisdiction over Cyber Torts under Brussels I bis Regulation", *THEMIS Competition 2016, Semi-Final C: International Judicial Cooperation in Civil Matters – European Civil procedure*, European Judicial Training Network (EJTN), 2016, p. 3, available at: https://portal.ejtn.eu/PageFiles/14777/Written%20paper_Romania.pdf.

[16] G. G. Georgescu/P. M. Marin/D. Vasile, *op. cit*., p. 4-6.

allows a claimant to sue multiple defendants in the courts of the place where any one of them is domiciled, provided the claims are closely connected. Furthermore, the rules on *lis pendens* (Article 29) and related actions (Article 30) aim to prevent parallel proceedings and contradictory judgments. However, these tools are not a complete solution. Article 30, for example, only gives the court discretion to stay proceedings or decline jurisdiction but does not guarantee consolidation. These rules do not fully resolve the core issue for a claimant wishing to aggregate damages from multiple jurisdictions against a single defendant when the "causal event" court is not chosen.

11. The application of these established legal principles to AI-related infringements presents significant complexities. For instance, the location of the "causative event" becomes ambiguous; it could be considered the developer's headquarters, the location of the training servers, or the place where a user input the prompt that generated the infringement. Similarly, the "place of damage" is difficult to pinpoint, as it could be the copyright owner's domicile, the location where the infringing output was downloaded, or the market where the original work was harmed[17].

12. To illustrate these principles, consider a hypothetical but realistic scenario where an AI developer is based in Ireland, a user is domiciled in France, and the rights holder resides in Germany. The German rights holder would have several jurisdictional options. They could sue the developer in Ireland, the location of the causal event (the model's training), where the court would have jurisdiction to rule on the entirety of the damage. Alternatively, they could sue the developer in Germany, the place of damage, but the German court's jurisdiction would be limited to the harm suffered within Germany. Similarly, the rights holder could sue the user in France, the location of their causal event (inputting the prompt) and their domicile, allowing the French court to adjudicate on all damages resulting from that user's specific actions. The other option would be to sue the user in Germany as the place of damage, again limiting the court's jurisdiction to harm that occurred in Germany. This duality of options provides the rights holder with a strategic choice but also illustrates the complexity of cross-border enforcement in the AI era.

V. Cross-border dilemma - Determining the applicable law under the Rome II Regulation

13. In cross-border intellectual property conflicts, Regulation (EC) 864/2007[18], or Rome II, is of fundamental significance. The EU private international law instrument lays down which domestic law must be applied in non-contractual obligations and accordingly also copyright infringement. Article 8 of the regulation enunciates a default rule by the title *lex loci protectionis*, which may be interpreted as the law of the place of sought protection. The concept of *lex loci protectionis* is highly reliant on the territorial nature of copyright. What this means is that all countries protect and provide these rights within their territories alone. In practice, if a copyright infringement occurs in Germany, German law will be applied. Similarly, an infringement occurring in France will be assessed under French law. The challenge with the internet is that a single act, such as sharing an unauthorized file online, can cause harm in multiple countries simultaneously. The practical consequence of the *lex loci protectionis* rule is that authors seeking to enforce their rights across the EU must base their claims on the respective laws of each Member State where the harm occurred. This creates a complex "mosaic" of applicable laws, which significantly increases the costs and complexity of legal proceedings[19].

[17] T. Madiega, "Artificial intelligence liability directive", *Briefing, EU Legislation in Progress*, European Parliamentary Research Service, February 2023, PE 739.342, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739342/EPRS_BRI(2023)739342_EN.pdf.

[18] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), *OJ* L 199*,* 31 July 2007, p.40.

[19] R. Laczko, "The Law Applicable to Copyright Infringements under the Rome II Regulation: Challenges and Alternatives in the Digital Age", *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae Sectio iuridica*, Vol. 58, 2019, pp. 60-62.

14. This is an important element of analysis from the private international law viewpoint. For example, consider an AI model developed by a US company and trained exclusively on servers located in the United States. If this model is later placed on the market in the EU, an EU-based copyright holder could sue the US company in an EU court (for instance, in the country where the harm is suffered). Once for example German court establishes its jurisdiction, it must then determine which country's law to apply to the infringement claim. This is where the Rome II Regulation becomes relevant. According to Article 8 of Rome II (*lex loci protectionis*), the court must apply the law of the country where the infringing act occurred. In this case, the key infringing act is the reproduction, that is, the copying of data required for the training process. Since this training took place entirely in the US, the German court would be required to apply US law to determine whether this reproduction was lawful. As a result, US legal doctrines like "fair use" would be the standard for judging the legality of the training, and EU copyright law, including the CDSM Directive's TDM exceptions, would not apply to that specific act[20].

15. However, the AI Act's binding articles, particularly Article 2(1)(a), establish its extraterritorial reach by applying the regulation to any provider placing an AI system on the EU market, regardless of their location. The stated rationale is to ensure a "level playing field" and prevent non-EU providers from gaining a competitive advantage by applying lower copyright standards. This approach to extraterritoriality differs notably from that of the General Data Protection Regulation (GDPR). The GDPR's territorial scope is primarily triggered by a connection to the data subject; under its "targeting" criterion (Article 3(2)), the regulation applies to non-EU companies if they process the personal data of individuals who are in the Union. Its reach is therefore data-centric, covering outbound data flows and processing related to EU residents. In contrast, the AI Act's reach is market-centric. It applies to any provider, regardless of their location, who places an AI system on the EU market, thus regulating inbound services[21]. This creates a direct conflict between two different legal regimes. On one hand, there is public market regulation (the AI Act), which requires compliance with EU standards as a condition for market access. On the other hand, there is a fundamental tenet of private international law (the Rome II Regulation), which dictates that the applicable law for a copyright infringement claim is the law of the place where the infringing act occurred (*lex loci protectionis*). Crucially, the AI Act doesn't change the rules of applicable law for copyright infringement under the Rome II Regulation. Instead, it establishes an independent regulatory condition for market access. A violation of this condition would be a breach of the AI Act, leading to administrative penalties, but it would not in itself constitute a copyright infringement under EU law if the training occurred entirely abroad. This is a classic example of the "Brussels effect", whereby the EU uses access to its single market as a means of exporting its regulatory standards globally[22].

16. The same principles of private international law that the AI Act's extraterritoriality attempts to bypass can also be used defensively by non-EU AI developers. A developer targeted for infringement in the EU would respond that although it may have violated the AI Act, there was no copyright infringement in EU law if the training took place entirely abroad. Consider a scenario where a German copyright holder sues an American AI developer before a German court, claiming the work was used for training without consent, thereby infringing their German copyright. By placing its model on the EU market, the American developer can be sued in a German court, which could establish jurisdiction under Article 7(2) of the Brussels I bis Regulation as the "place where the damage occurred". Once jurisdiction is established, the German court must then determine the law applicable to the infringement claim, for which it must apply the Rome II Regulation. The developer's defense would be that the alleged infringing act, the reproduction for training purposes, took place exclusively on servers in the US. Accordingly, under Article 8 of Rome II, the German court must apply US law to decide the merits of the claim. The develo-

[20] J. P. Quintais, *op. cit*.

[21] European Data Protection Board, "Guidelines 3/2018 on the territorial scope of the GDPR (Article 3) Version 2.0", 2019, pp. 5-7.

[22] J. P. Quintais, *op. cit.*

per would then argue that under US law, its actions constituted "fair use"[23]. If the German court accepts this argument, it would be required to dismiss the copyright infringement claim. The developer may still face significant penalties under the AI Act for failing to honor the EU opt-out mechanism, but it would have defeated the private copyright claim. This creates a division of liability: regulatory liability under the AI Act and civil liability for copyright infringement, which are subject to different rules and may lead to divergent outcomes. This defense strategy significantly complicates the enforcement of claims by EU copyright holders.

VI. Conclusions

17. The current EU legal framework is not a cohesive solution but an unstable compromise, creating a dual-track system of liability rather than a unified set of rules. The analysis provides several key answers to the questions posed. First, regarding the training of AI models, the AI Act successfully exports EU norms via the "Brussels effect", creating a potent regulatory obligation for all market participants. However, it does not alter the fundamental principles of private international law. A non-EU developer could simultaneously be in breach of the AI Act's market-entry requirements while successfully defending against a private copyright infringement claim in a Member State's court by invoking the *lex loci protectionis* rule under the Rome II Regulation. Second, concerning AI-generated outputs, the EU's anthropocentric copyright standard provides a clear, albeit challenging, answer: works generated without meaningful human intervention are not protected and fall into the public domain. The legal battleground will thus shift to defining the threshold of creative input required for "AI-assisted" works. Finally, liability for infringing outputs follows established principles: users face direct liability for their use of infringing content, while developers will likely be assessed under principles of indirect liability, where their duty of care will be paramount. Ultimately, this fragmented legal background is a temporary stopgap. The fundamental conflicts between public market regulation and private international law are unsustainable and will inevitably be resolved through CJEU's rulings and future legislative action, which will be essential to monitor.

[23] U.S. Copyright Office, "Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code (Circular 92)", December 2024, pp. 20-24, available at: https://www.copyright.gov/title17/title17.pdf.