

What's Up? FSE Talks for Screenwriters' Guilds in Europe

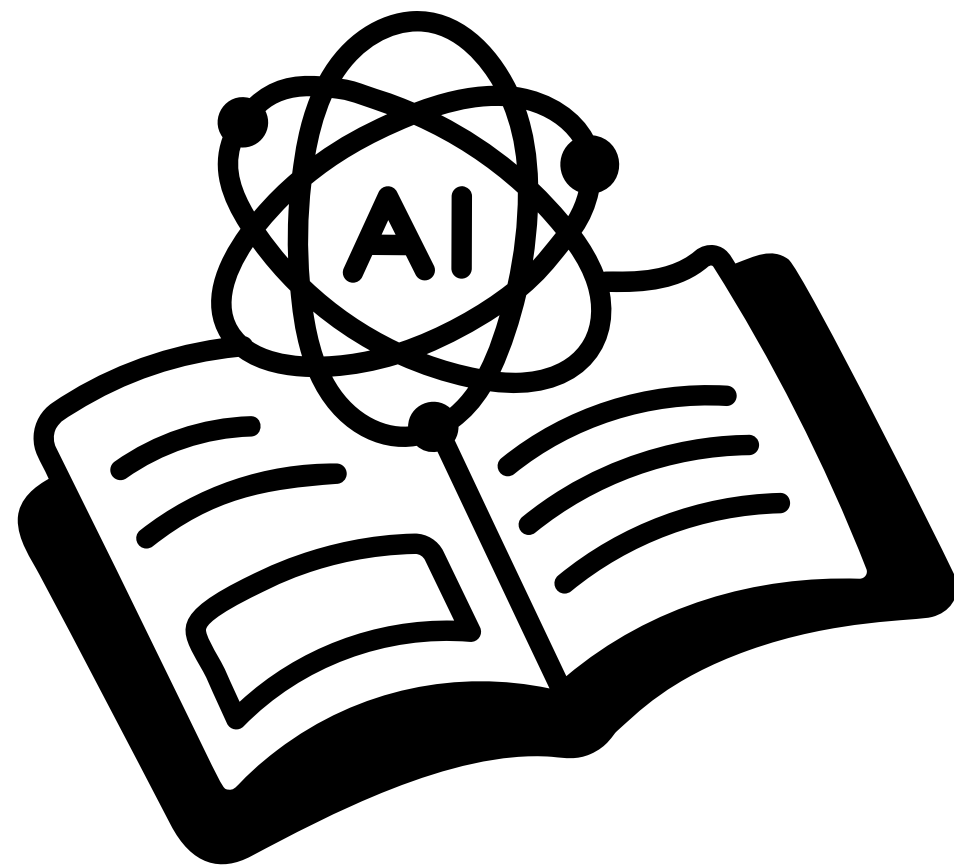
Meeting #1

**AI & the Berne Convention:
the old treaty that might just save screenwriters**

Online meeting, September the 11th from 12:00 to 13:00 (Brussels time)

Speaker : Denis GOULETTE

Why is everyone talking about the Berne Convention again?



The Berne Convention was signed in **1886**, in the age of gas lamps and typewriters. Yet today, it remains more relevant than many digital laws.

Why? Because Europe introduced a **text and data mining (TDM) exception** that requires authors to **opt out**, a concept Berne forbids.

Of course, it does not include a clause on AI. But if we are returning to a 19th-century treaty, it is because it is still applicable and takes precedence over any other law or treaty relating to copyright.

“If today’s laws fail to protect authors, then yesterday’s treaty becomes tomorrow’s weapon.”

The Heart of Berne: Mutual Protection Without Conditions



The Berne Convention is the global foundation of copyright protection.

It is a **pact between nations.**

A horizontal scroll of aged, yellowish-brown parchment with slightly irregular edges. The text is written in a bold, black, sans-serif font.

You protect my authors, I protect yours.

What does it mean?



European screenwriters are **automatically** protected in the US, and American screenwriters are protected in Europe, without having to register anything, fill out forms, or opt out.

Now imagine this:

🇺🇸 What if Trump withdrew from the Berne Convention and required every foreign author to pay \$1 million to register their scripts in the US?

That would **break the system**.

Now ask yourself:

🧠 Is that really so different from letting your script be used to train an AI in one country ... but not in another?

Berne is a pact. If AI breaks its rules, the pact is no longer valid.

What does the Berne Convention actually say?

Art.5(2)

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1. No formalities required

Article 5(2) – Protection is **automatic** from the moment the work is created.

→ No registration, no labels, no opt-out.



2. Strict conditions for exceptions

Article 9(2) – The famous three-step test :

- The exception must apply to **special cases** only
- It must **not conflict with normal exploitation** of the work
- It must **not cause unreasonable harm** to authors' interests

These principles are binding for all Berne members, including the EU and the US.

So when the EU introduces an opt-out system (which is a formal requirement), or considers a future exception for AI training, it is violating the spirit – and possibly the letter – of Berne.

“Under Berne, your rights are born with your work — not with a label.”

Art.9(2)

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Why Berne is Back in the Spotlight ?



- The EU created a TDM exception, but only if authors opt out.

That's a formal requirement, **banned by Berne**.

- **The Court of Justice of the European Union** already ruled in **the Soulier & Doke case** (C-301/15, 16 November 2016), on the basis of **Article 5(2)** of the Berne Convention:

“Silence does not equal consent.”

This was already widely acknowledged by **legal scholars** before the ruling (Jane Ginsburg).

“Opt-out violates Berne, EU law, and common sense.”

How the EU Chose Tech over Culture

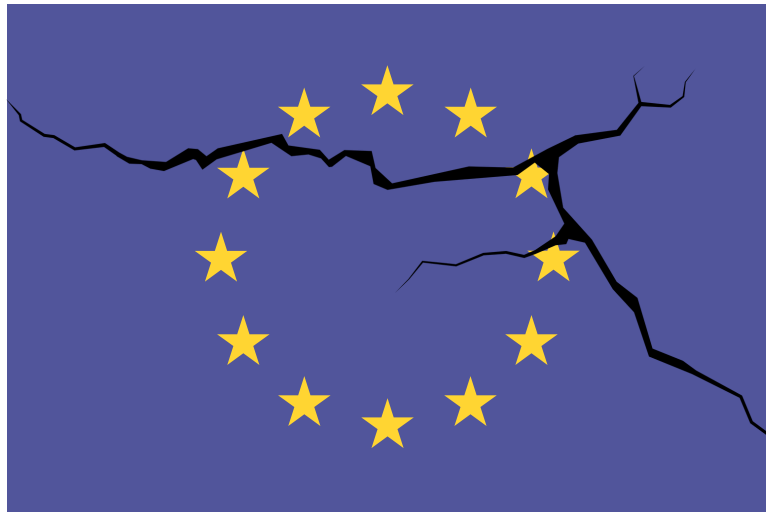
- **No impact assessment. No negotiation.**

In 2019, the EU passed the TDM exception quietly, during closed-door trilogue negotiations, without public debate or transparency.

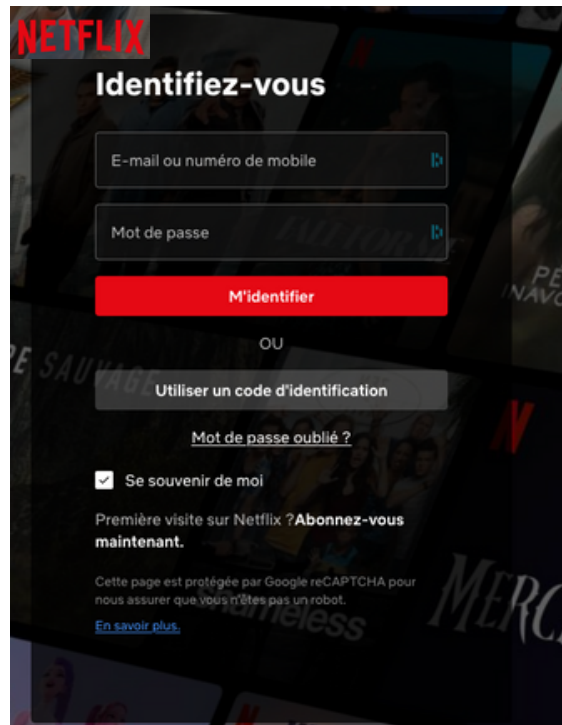
At the time, **ChatGPT didn't even exist**, and no one foresaw how massively AI would rely on creative works for training.

- **The EU made a deal with tech, and sacrificed authors in the process.** Since then, despite having opportunities to correct course through the AI Act and the Code of Practice, it has doubled down on that choice.
- This is not a misunderstanding. It's a **political choice**.

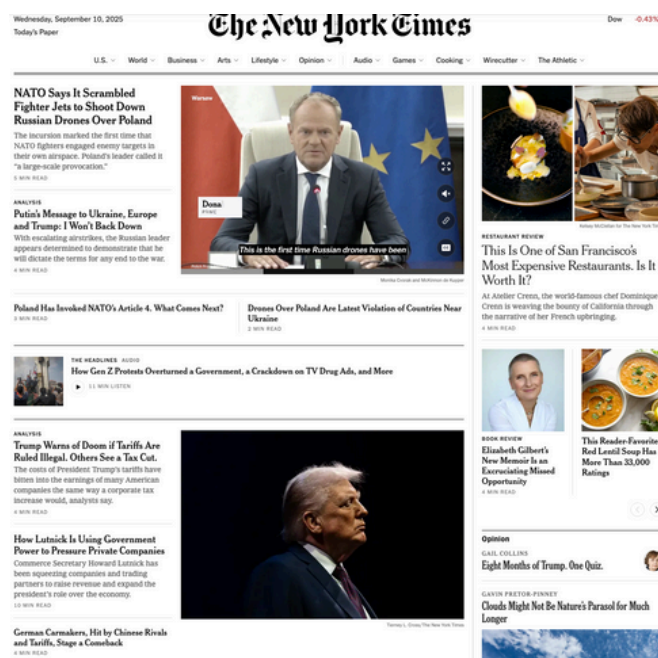
“Opt-out is the symptom of a political and cultural failure in Europe.”



The Real Problem Isn't Opt-Out : It's Piracy



OR



AI systems used to generate scripts and audiovisual content are not trained on content made legally available under the TDM exception.

They are typically trained on:

- Pirated movies,
- Extracted subtitles,
- Scanned books from illegal libraries.

👉 Under EU law, the TDM exception only applies when access to the content is lawful.

That means content must be accessible without circumventing any technical protection, login, or paywall.

The European Commission's reliance on robots.txt mostly affects **illustrators and journalists**, whose works can be scraped from **open websites**.

But **most audiovisual and script-based content is not available online in a form that can be lawfully mined**.

Access usually requires a **login, password**, or circumvention of technical protection measures, which places these uses **outside the TDM exception**.

“We’re fighting over the front door while they’re coming in through the window.”

What's Missing? Legal Action.

Authors in the U.S. are taking action, and courts are starting to respond. In Europe, **GEMA** (music composers) and French novelists are also beginning to fight back.

In **Bartz v. Anthropic** (N.D. Cal.), the judge refused, for now, to approve a \$1.5 billion settlement.

The deal proposed to pay stakeholders **\$3,000 per book**, not as a license, but as a way to **settle a mass copyright infringement claim**.

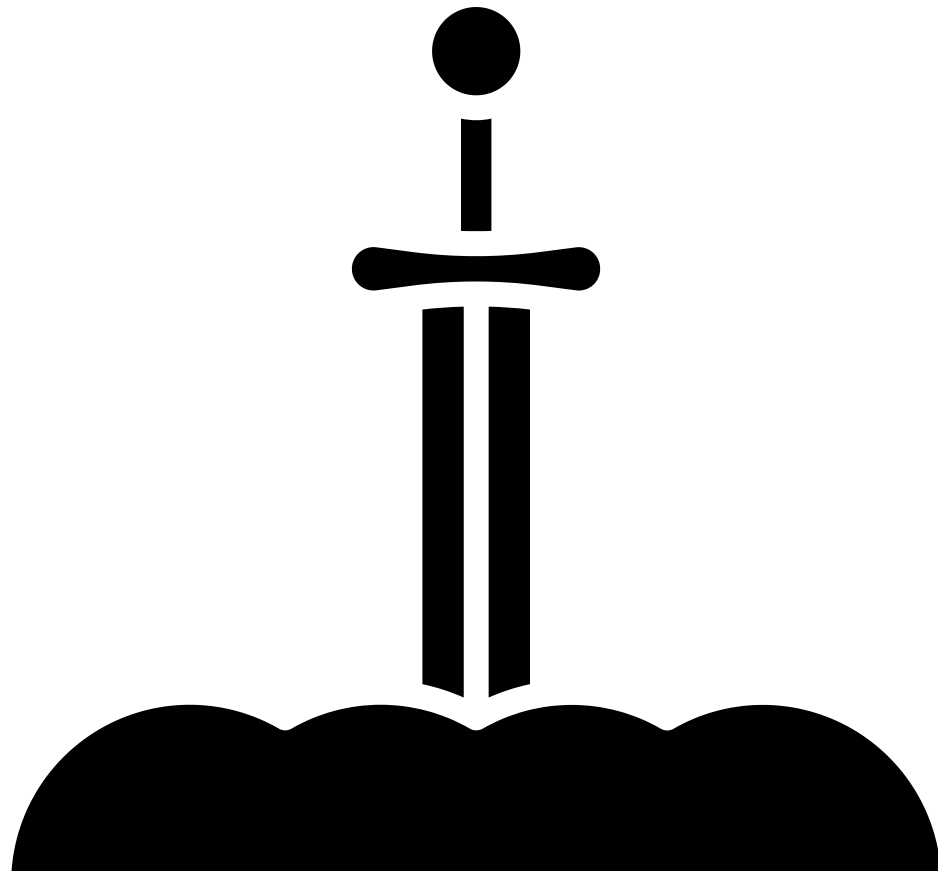
⚠ This isn't a precedent — yet. But the stakes are high:

- Some see it as the first step toward a global compensation benchmark.
- Others, including the judge, stress that authors must retain the freedom to say no.

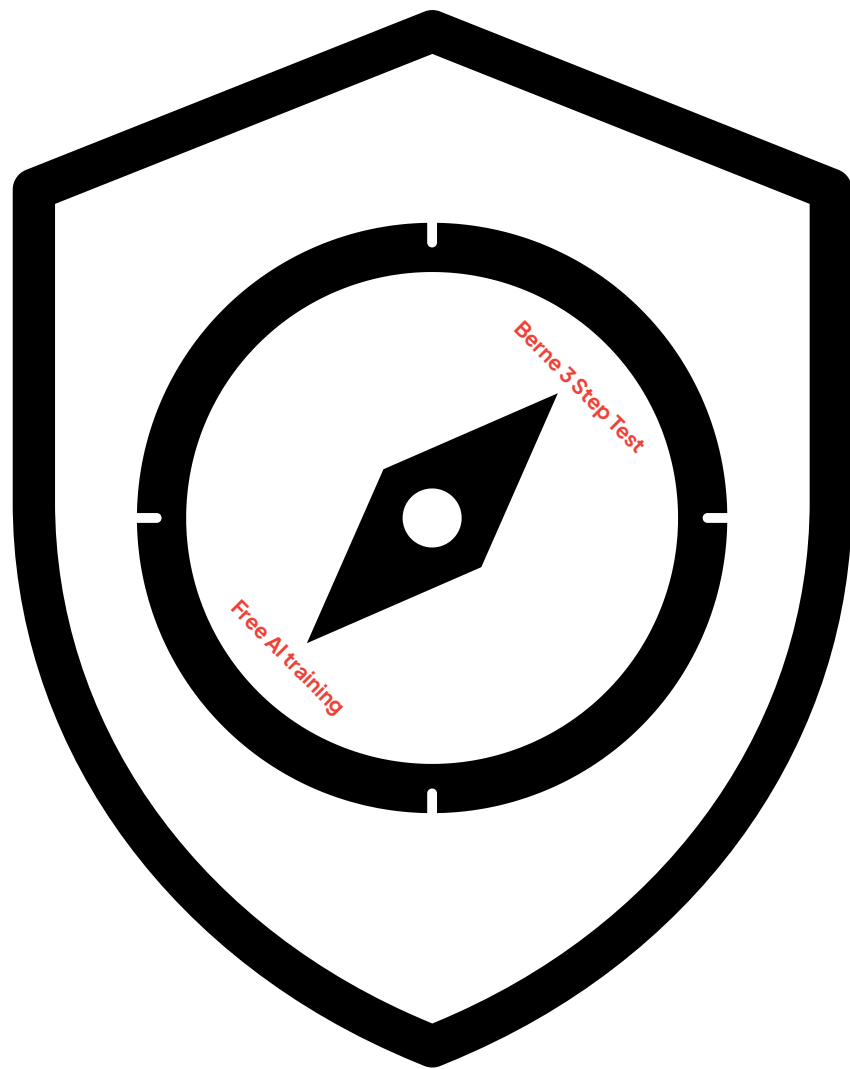
Meanwhile, screenwriters haven't sued.

And yet, AI is trained on **scripts, films, and subtitles**, without license or payment.

“The law won't protect us — unless we use it.”



Berne Still Matters for the Next Battle



The real threat?

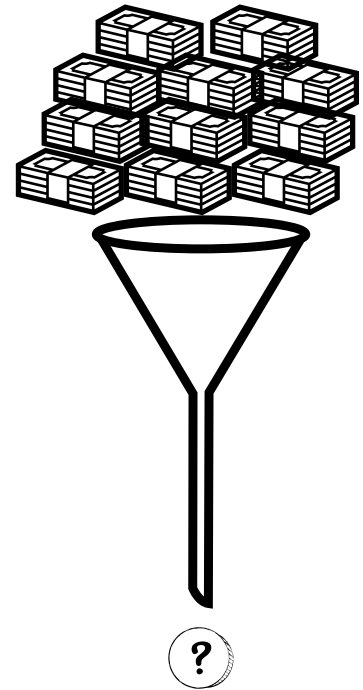
A **future exception** legalizing AI training, with **no opt-out at all**, and a **derisory compensation**.

In **July 2025**, the European Commission **openly suggested** revisiting the 2019 DSM Directive, **targeting Article 4 only**. Reopening it could mean **legalizing AI training** without consent.

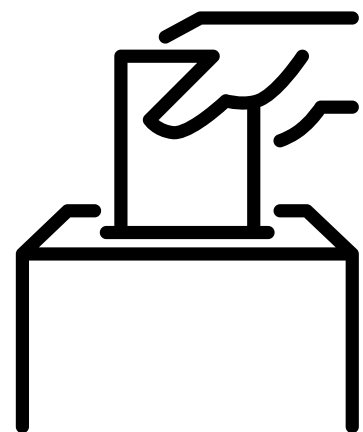
- It sets a clear legal test
- It draws a red line the EU must not cross

“Berne won’t save us alone — but it draws the red line.”

Consent or Compensation ?



OR



A new model could emerge for AI training:

- No author consent
- Mandatory exception
- Collective compensation, managed by third parties (CMOs).

But this isn't a teenager copying our movie on MP4.

AI systems are already replacing writers, not just copying them.

So how could “fair compensation” ever match the loss ?

This raises a political choice for screenwriters:

- Should we preserve our **exclusive right** to say **NO**?
- Are we ready to **abdicate that right** and accept **collective compensation**, with **no control from our guilds**? A model that would create a massive windfall for those collecting the money, **but no clarity on what a single writer would actually receive.**
- Or do we want to **preserve the right to delegate**, or not, to a Collective Management Organisation, with a mandate to negotiate licences?

➡ The answer must come from screenwriters and their guild, not the tech industry or Brussels.

“Tomorrow, they won't ask. They'll say it's paid.”

What to Remember for Your Guild



- **The Berne Convention is still a political weapon.**

It exposes the moral failure of the current path, especially when the EU's own Code of Practice now admits:

"Complying with this Code does not necessarily mean complying with EU copyright law."

This sentence, **absurd** on the surface, reveals a **panic mode** in recent months.

A quiet recognition that the **legal foundation of AI training in Europe is built on quicksand**.

- **If policymakers push for a mandatory exception,**

the three-step test under Berne may be the only remaining line of defence, against a **trickle-down model of "fair compensation" that fails to trickle**.

- **And no future law will compensate for past infringements. Only litigation will.**