



13 February 2024 – David Kavanagh

A BRIEF NOTE ON THE AI ACT

Current status of the Act

The AI Act was unanimously approved by the Committee of Permanent Representatives of the member states (COREPER) on 2nd February 2023. The responsible committees of the European and the Parliament will vote on the 13th February and then the whole Parliament in plenary session probably on 10 or 11 April.

The Act enters into force 21 days after it is published and then the various sectors impacted have period of time to adapt. The rules for Large Language Model Generative AI (under the heading of General Purpose AI – GPAI) will therefore come into full force approximately in mid-2025.

Until quite late in the process France, Italy and Germany were advocating for a lighter regulatory approach in opposition to the Parliament approach but first Italy, then Germany accepted the various compromises and finally even France supported the text.

It is widely accepted that there is much more additional detailed work to do and the Act foresees approximately 20 secondary legislative acts, to address the many details of implementation. Then there will be the establishment of the AI Office and three other supervision and enforcement bodies as well as national regulators.

In other words, the formal passage of the Act into law marks the beginning of work on this issue rather than the end.

Our priority issues

The final version of the Act is complex.

Some areas that AI might operate in are outrightly prohibited, for example inappropriate use of biometric data, social scoring and so on. For the others there is a tiered approach, with general transparency requirements for all models and additional obligations for models considered to be high-risk.

For General Purpose AI (such as Large Language Model generative AI) the key requirement is transparency, but copyright is also addressed.

Article 52(c) says that “Providers of general purpose AI models shall”

“put in place a policy to respect Union copyright law in particular to identify and respect, including through state of the art technologies, the reservations of rights expressed pursuant to Article 4(3) of Directive (EU) 2019/790 ...”

(This refers to the so-called and much criticised opt-out provision of the Copyright Directive which allows rights holders to opt out of having their copyright property scraped for use in building data sets.)

To try to ensure that you can see if copyright work has been used in creating datasets on which LLM technology is built Article 52 (c) (d) says that Providers of GPAI must also:

“ ... draw up and make publicly available a sufficiently detailed summary about the content used for training of the general-purpose AI model, according to a template provided by the AI Office ...”

Here too the article, though welcome, leaves a lot of questions to be argued over in the coming months and years. What exactly is a “sufficiently detailed summary”?

Next steps

Referring directly to an article in one piece of legislation to an article in another piece of legislation is obviously problematic. Legal challenges to Articles 3 and 4 of the Copyright Directive would now have an impact not just on copyright legislation but also on AI legislation.

It seems very likely therefore that this issue will be addressed again in the next EU mandate. After the election of the new Parliament in June and the appointment of new Commissioners, and in the context of the detailed implementation of the AI Act, a new legislative Act is quite possible intended to resolve the problem of building datasets based on copyrighted information and compensating authors and rights-holders. This will not be that easy. Firstly, there are complex legal questions raised and secondly, the wealthiest and most powerful companies in the world will be ranged against us.

Summing up

The likely final passage of the AI Act marks an important first step in regulating this runaway technology which has been built on other people’s data including copyrighted material.

Unsurprisingly many questions, especially questions of detail and implementation, have been left unanswered. Resolving these many questions, with a new Commission and new Parliament, while protecting our members interests, is going to take up a great deal of our time over the next years.

This technology can write like a machine, not like a human, but it still has the potential to be very disruptive. Protecting our members from the damage that can be caused by the people who wield this technology is going to be difficult.

Resolving the contradiction between authors rights/copyright and big datasets seems, to say the very least, problematic.

We don’t have the resources to do all this – close co-operation with all authors groups will be an essential basis.