

# Legislation and regulations regarding AI

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## 1. Subject

AI is becoming more and more common in all industries. With AI's rapid development governing bodies all around the world have begun to regulate its use and development. This report aims to provide the reader a general understanding of the current legislative landscape regarding AI, mainly focusing on the EU, but also exploring other regions to find out what might be done differently. For this report, we interviewed a lawyer who preferred to remain nameless. His/her takes on different matters discussed in this report are marked with "**Lawyer's take**". This report is written by Metropolia students Janne Lähteenmäki, Mikko Tanhola and Tapio Humaljoki.

**Note:** This report is not meant to give the reader any legal advice. Please consult a lawyer for all matters regarding AI and related regulations.

## 2. Definitions

### Artificial Intelligence or AI System

An AI system is a machine-based system that can operate with a varying degree of autonomy, is able to adapt after it has been deployed and can deduce how to generate outputs such as content, recommendations and/or predictions from given input. [1.] EU AI Act classifies AI systems into four risk groups:

- **Unacceptable Risk:** AI systems prohibited in the EU. These include, but are not limited to, systems that use subliminal manipulation as well as services intended for general social scoring and biometric categorisation. [2.]
- **High Risk:** AI systems most regulated by EU. These systems have potential to cause significant harm if they fail or are misused. Examples of high-risk AI are systems intended to be used as safety components or in law enforcement. [2.]
- **Limited Risk:** AI systems with the potential to manipulate or deceive. In these cases, the user most often be informed that they are interacting with an AI. [2.]
- **Minimal Risk:** Every other AI system that is not included in the other groups. [2.]

US copyright office

“The Federal agency tasked with administering the copyright registration system, as well as advising Congress, other agencies, and the Federal judiciary on copyright and related matters”

## Fair use

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances.

## TDM

Text and data mining: process of using automated methods to analyse and extract useful information from large volumes of text and data.

## SME

Small and medium-sized enterprises

## 3. EU AI Act

The EU AI Act represents the artificial intelligence regulation of the European Union. It was first proposed by the European Commission on April 21, 2021. Preparatory work began before its official presentation, but the actual legislative process started after the proposal. The European Union Parliament approved the regulation on March 13, 2024, with 534 votes in favour, 46 against, and 49 abstentions, after an agreement had been reached with member states in negotiations in December 2023. [3.]

The current situation is that the Council of the European union followed with its approval on May 21, 2024. Depending on different provisions of the regulation, certain provisions will come into effect immediately, or within a specified time frame. The purpose of this paragraph is to explain what the EU AI Act addresses and what might be expected when consensus is reached. [4.]

## General rules

The EU AI Act consists of four different severity levels: Prohibited/Unacceptable Risk, High-Risk, Limited-Risk, and Minimal Risk AI, these severity levels have been reviewed at the beginning of the document. Most AI programs and tools fall into the minimal risk category. This means that the programs can be used without any additional restrictions. It should be noted, however, that some aspects lean towards

the Limited-Risk category depending on the use of AI. For instance, images and texts that inform people or are related to the public interest, should be expressed as AI-generated material. Chatbots such as ChatGPT usually falls to the category of Limited-Risk. [5.]

When common rules of the EU AI Act are violated, the fine is determined by the percentage of the business's turnover. An exception applies to SMEs and startups, which are subject to administrative fines. [6.]

When it comes to terms of service, the general rule is that the AI developer is responsible for its legality and functionality, while the user is responsible for the appropriate use of the AI-generated content within his/her own context. Whenever an AI solution is used for content generation, it's crucial to review the terms of service and, if necessary, even consult with a legal professional to ensure that no serious violations occur. [7.]

**Lawyer's take:** *In most cases, the responsibility to use the AI within the limits of the law is stated in the terms of use, and the user is responsible to make sure he/she has the applicable licenses or other rights that may be needed.*

## Copyright questions

The general rule in EU is that if artificial intelligence is used to edit or produce images or text, the products cannot be attributed with copyrights. An exception applies in cases where there is evidence of human involvement in the creative process. The extent of human creative work considered sufficient, varies. There is no specific guideline to know, if enough of human creative contribution is used, and it is case sensitive. If the produced material meets the copyright requirements, in most cases, the copyright belongs to the AI user, not the AI itself, or its developer. [8.]

**Lawyer's take:** *While there is not a clear answer yet, there is a strong premise that AI generated material cannot receive copyright protection. The premise set by international agreements and the Court of Justice of the European Union is that only works created by a human can receive copyright protection.*

It is important to review the terms of use of the AI solution being utilized. Some AI programs have been trained on copyrighted material. These AI programs are developed for research purposes. Therefore, such AI programs cannot be used for commercial purposes. [9.] There have been several cases, where authors claim that their work under copyright has been used as training material of an AI, but there has not been a major legal case in the EU yet.

When creating visual content, human oversight is always necessary. One might consider seeking answers by asking questions like, 'Have you seen something similar before?' Google also provides services for reverse image searching, which can be beneficial. [9.]

***Lawyer's take:*** *For a given material the copyright belongs always to the creator, therefore any legal use of said material needs an authorization from the creator. If a party wants to use this material, they need to acquire the copyright for it or get a license that permits the use of the material.*

*involve licenses. The basic principle is to consider how much it would have cost to legally purchase a license for the material in question. Even when developing AI solutions internally within the company, there can be violations during the AI training phase. The final product may not even have any significance, and at this stage, the legality of the training material and the legal use of AI must be considered.*

It is also important to maintain proper documentation. Keeping records such as when the image was created, what tools were used, and other relevant information is crucial to prove that the creation of the image was not intended to infringe upon anyone's copyright. It should be remembered that the field of AI is constantly advancing and changing, so continuous monitoring of updates should be conducted. [9.]

## AI Pact

The AI Pact is a voluntary, collaborative initiative that complements the EU AI Act by promoting ethical and responsible AI development and deployment. Originating from the need to proactively address the rapid advancements in AI technology, the AI Pact invites stakeholders, including AI developers, businesses, academic institutions, and policymakers, to commit to ethical guidelines and best practices. These commitments, which align with the principles of the EU AI Act, cover key areas such as transparency, accountability, fairness, and human oversight. Participants engage in sharing best practices, attending workshops, and participating in peer reviews to enhance compliance and innovation. The AI Pact emphasizes self-regulation and transparency, requiring participants to publish reports on their AI practices. By fostering collaboration and proactive risk management, the AI Pact aims to build trust, support continuous improvement, and ensure that AI systems are developed and used in ways that respect fundamental rights and societal values. This living framework evolves over time, encouraging stakeholders to stay informed and adapt their practices to emerging technologies and regulatory developments. [10.]

## Finland

In Finnish legislation, AI is not currently addressed as a separate subject, but this does not mean that the use of AI is completely unregulated. Issues related to AI can fall under various laws and regulations that cover, for example, data protection, security, liability issues, and ethical questions. For example, Section 13B addresses the restrictions on text and data mining. What comes to TDM, it is often used for training AI. The section states that for general TDM, the person performing it must have lawful access to the work. If this condition is met, the work can be used unless the rights holder has withheld this right either technically or through contractual terms. The right can be reserved in a machine-readable form, such as in metadata or in the digital terms of use. [11.]

**Lawyer's take:** *The lawyer we interviewed does not believe that AI-generated material could be granted copyright in Finland, as it can be in the UK, due to the significant differences between our legal systems. In the EU, which member state Finland is, the main principle is that in order to get copyright for certain material, human has to be the author.*

Finland follows the framework of the EU AI Act and has not announced any internal guidelines that would significantly differ from the rules of the EU AI Act. However, it is possible that in the future, Finland may add or specify certain guidelines that the EU AI Act already mentions without no definite information about this yet. Therefore, it can be stated that Finland adheres to the laws and regulations outlined in the EU AI Act, as an EU member state. [12.]

**Lawyer's take:** *When it comes to copyright matters, Finland, as a member of the EU, must adhere to the guidelines set by the EU, and individual member states cannot establish their own guidelines in this regard.*

## 4. USA

### Copyright in USA

In May 2023 the copyright office in USA made an initiative to examine the copyright law and policy issues raised by AI technology, including the scope of copyright in works generated using AI tools and the use of copyrighted materials in AI training. The initiative was raised due to the increasing concerns of congress and public due to the rapid development of AI and machine learning models. Following this initiative the copyright office has released a new guidance for registering works containing AI-generated material. [13.]

The copyright office requires, today, any work that applies for copyright to have a human authorship meaning that a human was mostly responsible for the works creative direction and control. Works that are 100% generated by a machine even

with directions from a human cannot receive copyright protection. As seen in the copyright registration guidance:” When an AI technology determines the expressive elements of its output, the generated material is not the product of human authorship. As a result, that material is not protected by copyright and must be disclaimed in a registration application”. [14.]

While applying for a copyright, authors must disclose whether they have used AI in creating the work and which parts particularly have been made with AI. If AI was used for a part of the work or a human makes improvements or modifications to that work, a copyright can be given for the parts that were made by a human leaving the AI generated parts unprotected by copyright. [14.]

#### Examples regarding copyright registration:

Completely AI-generated image was denied copyright because it lacked human authorship. A graphic novel with human authored text and AI-generated imagery received copyright but the individual images remained without copyright protection. [14.]

#### Fair use in training AI with copyrighted material

There are several court cases ongoing in the United States regarding fair use in training of AI:

- New York times vs OpenAI and Microsoft, where allegedly OpenAI has used New York Times articles to train their AI models without authorization, while OpenAI claims that it falls under fair use [15].
- class-action lawsuit against OpenAI, where GitHub users claim that OpenAI has unlawfully trained their AI model with their data found on GitHub [16].
- Getty Images vs Stability AI, where allegedly Stability AI downloaded millions of images from Getty Images, which is against their terms of use [17].

While fair use allows copying of copyrighted works in some extent, as AI is becoming more prevalent, the interpretation of the law becomes more difficult. In an interview by the Washington Post Eric Goldman, a professor at Santa Clara University gave his opinion on training AI with copyrighted material:

“I’m going to take the position, based on precedent, that if the outputs aren’t infringing, then anything that took place before isn’t infringing as well,” Goldman said. “Show me that the output is infringing. If it’s not, then copyright case over.” [18.]

As long as there are no rulings against using copyrighted material while training AI models, the developing companies can follow the precedent and claim that their actions fall under the fair use. The ongoing cases are important for setting the direction for where the development of AI will proceed.

On April 2024 the National institute of standards and technology released a framework called AI risk management framework that aims to help organisations to identify risks that comes from AI, and it gives guidance on how to avoid those risks. This framework is not mandatory to use but it provides safety and trust for the product and development process. [19.]

## 5. China

China has three major regulations regarding algorithms and AI, with one more under consideration [20]. Provision on the Management of Algorithmic Recommendations in Internet Information Services, which was published in 2021, aims to regulate the recommendation algorithms used in China by outlining what a recommendation algorithm is allowed to recommend and what the service is permitted to be used for. It is also aimed to protect users by demanding that the user is clearly informed about the algorithm and giving them an option to opt out of using the algorithm. [21]

Provisions on Administration of Deep Synthesis Internet Information Services, published in 2022, forces deep synthesis service providers to place a clear label on their content, such as deep fakes or AI generated images and texts, to notify the viewer that AI has been used to generate that content. In cases where an individual's biometric information, for example faces or voices, are being edited, consent must be obtained from the individual in question. [22]

Adopted in 2023, the Interim Measures on Generative AI seeks to regulate AI systems such as AI image generators and chatbots by enforcing measures that prevent discrimination and spreading of misinformation. Additionally, it demands measures be taken to improve accuracy and reliability of AI and to ensure that the AI system respects intellectual properties [23].

Officially named the Draft of Scholars Suggestions, the 2024 law draft would, if passed, allow AI providers to train their models using copyrighted data if the output differs from the data's original purpose. It would also make possible to copyright AI-generated content if the person applying for the copyright or patent has altered the output sufficiently [24].

## 6. Great Britain

The UK's current copyright law can protect computer generated works, and the copyright holder is in most cases the user who makes the necessary arrangements

but can also be the developer of the AI or machine if the user's inputs are minimal. The copyright lasts for 50 years from the creation of the work. [25.]

In 2020 UK government launched a consultation on Artificial Intelligence and Intellectual Property. The consultation focused on the copyrights of computer-generated works, text and data mining (referred as TDM) and patents. Following the consultation no immediate changes were made to protection of computer-generated

works. It was decided that the law on TDM needs an exception to allow TDM for any purpose to benefit wide range of stakeholders in the UK. Research could also provide useful for wider public. TDM for non-commercial research is already allowed, provided the material is obtained legally. Patent legislation received no changes after consultation. Ethics problems were raised by respondents. [26.]

In 2022 data protection and digital information bill was introduced. It aims to remove unnecessary difficulties for businesses and assist in growing UK infrastructure and technological advancements. It also provides guidelines for AI safety and regulations so that the AI systems that are build are safe. The bill consists of 6 main points which are:

- Ensure that AI is used safely
- Ensure that AI is technically secure, and functions as designed
- Make sure that AI is appropriately transparent and explainable
- Consider fairness
- Identify a legal person to be responsible for AI
- Clarify routes for redress or contestability

“Instead of giving responsibility for AI governance to a central regulatory body, as the EU is doing through its AI Act, the government's proposals will allow different regulators to take a tailored approach to the use of AI in a range of settings. This better reflects the growing use of AI in a range of sectors.” [27.]

In 2023 a paper called “a pro innovation approach to AI regulation” was presented to Parliament carrying UK's AI strategy on. This paper sets the groundwork for allowing flexible implementation of new regulations with the help of existing governing bodies. This framework displays 5 core principles to help with the responsible and safe development of AI:

- Safety, security and robustness

- Appropriate transparency and explainability
- Fairness
- Accountability and governance
- Contestability and redress

These principles are planned to be implemented with the help of existing regulators to best suit the required fields and not as strict policies. UK's plan is to increase the safe and innovative research of AI and strengthen the UK's position as one of the leading countries in the field of AI. [28.]

## 7. Thoughts and conclusions

AI has had a huge impact on variety of industries in the last few years. Rapid development of technology keeps decision makers on their toes as new laws and regulations are needed to combat uncertainty in the field. It is crucial to strike a balance between IP holders and AI developers to ensure that artists and human creators don't lose all their hard work for free while still allowing innovation and research to bloom in the field of AI and machine learning. Current legislation is ambiguous and differs widely between regions. Many experts are waiting for more precise laws and example cases to emerge. As global regions like EU, USA and UK have different legal systems, questions regarding AI and copyrights differ, and cross-region collaboration might get complicated as companies that span multiple regions get involved. It is still important to research and learn about legislation of regions outside the EU, as they might give some insight into how the legal landscape might evolve in the EU.

As an EU member, Finland complies with the legislative standards and examples set by EU. Currently any material in Finland needs be created by a human to qualify for copyright protection. This means that no computer or AI generated material would apply, and this is not likely to change any time soon. While working with data that is not originally one's own, it is important to remember to ask for permission before modifying that data or using it to train own AI.

Only time will tell how far the technology advances and how it affects our policies and legislation. We believe that both the research and technical progress within AI is important and necessary, but it must remain safe and fair for all parties involved. It is the developer's responsibility to make sure that the AI is created with regards to the best safety standards, but users also hold some accountability to use the AI in the way it was intended.

We believe that implementing a system to differentiate AI generated material from human made works for example in a form of a signature or a watermark would be beneficial, because it would make everyone understand what is computer-generated and what is not. Currently this is not mandatory.

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