SECRETARIAT
Alexandru Ion Giboi
Switzerland
Mobile: +41764.756.663
E-mail: secretarygeneral@newsalliance.org
Website: www.newsalliance.org
--

COMMENTARIES OF THE EANA COPYRIGHT COMMITTEE

Measure I.2.1. Draw up, keep up-to-date and implement a copyright policy
Unfortunately, the signatories of the CoP are not obliged to publish their copyright policy but are merely encouraged to publish and update a so-called summary. Whether this action is properly implemented is subject only to internal control. Instead of the previous obligation of a summary (which we already thought was insufficient), there is now only an encouragement.

Measure I.2.2. Reproduce and extract only lawfully accessible copyright-protected content when crawling the WWW
The wording that the signatories should be encouraged to take technological measures (according to InfoSoc Directive) so that, for example, paywalls are not circumvented to ensure a lawful requirement is kind of dubious. This should actually be self-evident and need no mention at all. The fact that this wording was chosen could have the consequence that content that cannot be found behind a paywall would automatically be classified as lawfully accessible (for everyone and every action). This point could therefore lead to a completely false understanding of the legal situation.

The wording “reproduce and extract” is very specific and could lead to signatories circumventing it. Signatories could take the position that certain actions do not fall under these terms, for example. It would be preferable to use general terms here that automatically cover many actions, such as access or use.

The next point of criticism is that the signatories should only make “reasonable efforts” to exclude piracy domains from their crawling activities. This is especially incomprehensible in view of the anti-piracy provision (“websites that are recognized as such by courts or authorities in the European Union and the European Economic Area”). Signatories should be prohibited from using copyright infringing websites that are publicly accessible and identified as piracy websites.

The statement “To ensure that signatories only reproduce and extract lawfully accessible works and other protected content when using web crawlers or on behalf of such web crawlers to crawl, scraping and/or otherwise compiling data for the purposes of text and data mining as

EUROPEAN ALLIANCE OF NEWS AGENCIES
EANA

SECRETARIAT
Alexandru Ion Giboi
Switzerland
Mobile: +41764.756.663
E-mail: secretarygeneral@newsalliance.org
Website: www.newsalliance.org
--

defined in Article 2(2) of Directive (EU) 2019/790 and for training their general purpose AI models, signatories will:" is not convincing because it could be interpreted as stating that GPAI training is TDM.

Measure I.2.3. Identify and comply with rights reservations when crawling the WWW
Like before, unfortunately as was to be expected, Robots.txt is given a premium status by being the means of choice for declaring reservations, which signatories must always respect. It is incomprehensible why this still persists after so much criticism in the past. Furthermore, the signatories only have to use their "best efforts" to respect them. Opt-outs in plain language (e.g. in terms and conditions) are not mentioned at all.

The aim is merely to promote the development of "relevant" machine-readable standards that the signatories would support – rather than obliging them to adhere to the appropriate means chosen by the rights holders. Sadly, this is not going in the right direction.

Search engine providers that also have GPAI systems are again merely "encouraged" to take appropriate measures to ensure that TDM reservations for AI applications do not negatively impact findability of content in search engines.

The transparency of crawlers is limited to the implementation of "reasonable measures." This is absolutely vague and therefore insufficient.

Point 2 may be positive. But if the CoP rightly clarifies that these obligations "are without prejudice to the right of rightsholders to expressly reserve, in any appropriate manner, the use of lawfully accessible works and other subject-matter for the purposes of text and data mining in accordance with Article 4(3) of Directive (EU) 2019/790, such as machine-readable means in the case of content that is made publicly available online." one is justified in asking why rights holders need these obligations at all, since they run counter to this provision.

Measure I.2.4. Obtain adequate information about protected content not searched by the signatory

SECRETARIAT
Alexandru Ion Giboi
Switzerland
Mobile: +41764.756.663
E-mail: secretarygeneral@newsalliance.org
Website: www.newsalliance.org
--

The measures for complying with the rules for third-party records have been significantly weakened. The second draft called for “assurances,” this draft merely suggests checking a record provider's website or “requesting information,” thereby rendering any meaningful due diligence moot. AI providers can now rely on self-serving declarations from third-party data set providers without any independent verification, and in the absence of such declarations, they can claim that they have made reasonable efforts but that the information was not available. Furthermore, assurances that no copyright infringement was committed by third parties was reduced to obtaining confirmation that they had deployed web crawlers that read and follow the instructions of robots.txt”.

Measure I.2.5. Mitigate the risk of production of copyright-infringing output
Everything is reduced to “reasonable efforts” and the mitigation “repeated” infringements. These formulations reduce the level of protection and make compliance and enforceability very difficult.

For rightsholders, it is not enough that signatories are required to “prohibit copyright- infringing uses” in their “acceptable use policies, terms and conditions, or other equivalent documents” Furthermore, the measure on terms and services now includes an exception for GPAI models under “free and open-source licenses”. Can also be interpreted as a regulatory gap.

Due to the fact that the third draft is linguistically and contextually vague and leaves room for interpretation in some places, there is a risk that the copyright will be undermined in various places.

Measure I.2.6. Designate a point of contact and enable the lodging of complaints
A point of contact of course is generally positive, but it is questionable how practical this will be. There is no provision for expeditious processing, and signatories will not be required to respond if complaints are deemed “unfounded or excessive”.

The recitals of the section still state that “compliance should be appropriate and proportionate to the size and capacity of the providers, with due regard to the interests of SMEs, including start-ups.” It is completely unclear what this means, even if it is positive that SMEs are not excluded in principle.