

Analiză comparativă a limitelor drepturilor de autor în spațiul digital. Limitarea libertății de exprimare?

Comparative Analysis of the Limits of Copyright in the Digital Space. Limiting Freedom of Expression?

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Rezumat: Textul Directivei UE 2019/790 privind drepturile de autor pe piața unică digitală stabilește mai multe reguli menite să protejeze drepturile de autor în sfera digitală, alături de mai multe excepții care permit utilizarea conținutului protejat, fără a fi nevoie de consimțământul titularului drepturilor de autor.

De un real interes pentru noi este art. 17 din Directivă, care stabilește responsabilitatea platformelor online, precum YouTube sau Facebook, pentru conținutul încărcat de utilizatori, atunci când acest lucru ar conduce la încălcarea drepturilor de autor. Totodată, sunt stabilite anumite limite legale care permit utilizarea conținutului, cum ar fi parodiile, criticile sau recenziiile (art. 5 din Directiva 2001/29/CE).

Având în vedere cele de mai sus, ne propunem să analizăm comparativ unele dintre limitele drepturilor de autor, oglindind o posibilă versiune întâlnită în Canada sub forma conținutului generat de utilizatori.

Întrebarea la care vom răspunde prin intermediul acestui studiu este: „Cum protejăm drepturile de autor în sfera digitală și, în special, la nivelul platformelor online utilizate pentru distribuirea conținutului ?”.

Cuvinte-cheie: fair use, user generated content, opere derivate, limite, drept de autor.

Abstract: The text of the EU Directive 2019/790 on copyright in the Digital Single Market establishes several rules intended to protect copyright in the digital sphere, along with several exceptions that allow the use of protected content, without the need for the consent of the copyright holder.

Of real interest to us is art. 17 of the Directive, which establishes the responsibility of online platforms, such as YouTube or Facebook, for content uploaded by users, when this would lead to copyright infringement. At the same time, certain legal limits are established that allow the use of content, such as parodies, criticisms or reviews (art. 5 of Directive 2001/29/EC).

Given the above, we propose to analyze in a comparative manner some limits of copyright, mirroring a possible version found in Canada in the form of User Generated Content.

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The question we will answer through this study is: „How do we protect copyright in the digital sphere and, in particular, at the level of online platforms used to distribute content?".

Keywords: fair use, user generated content, transformative uses, limits, copyright.

1. Introduction

Our research will center around the exceptions (limits) of copyright, on their history, on analyzing the limits of copyright in the digital sphere, and how they function.

The history of copyright in the European Union reached its culminating point in the July 1995 act entitled „Copyright and Related Rights in the Information Society". It stated that Europe needed to harmonise its laws, including in the field of intellectual property, in order to respect the interests of rights holders in line with the interests of users. We are mainly talking about an information society and how copyright should be applied to new technologies².

The way in which the various works that fall under copyright are protected will mean either technological evolution or regression in the field³. This is due to the different legal systems in each country having different opinions on how to protect the subject matter of copyright.

For those services that can be requested at any time by users, greater and more harmonised protection should be considered, especially in the way in which the requested work is subsequently communicated to the public. This was also taken into account in a 1996 European Commission communication.

An issue that we also want to analyze in this research is that of the right to private use of works, a use perceived as an exception or a limit of copyright that currently could endanger the future defense strategies of services that will develop through the evolution of the digital domain.

In Romanian law, we discuss several limits proposed by Law no. 8/1996 on copyright and related rights, namely: the limit regarding the taking over of a short quote, the limit regarding the reproduction of works of art in public spaces or for the benefit of people with disabilities, the limit regarding press magazines, the transformation of the work into a parody or a caricature. Of real interest to us is the limit provided for by Canadian legislation, namely User-generated content, which we will also analyze⁴. Moreover, we will also define the fair use doctrine in order to have an overview of what copyright limits mean and what effects or consequences they have in the current context of the evolution of the digital sphere.

² G. J. H. Smith, *Internet Law and Regulation*, Ed. Sweet & Maxwell, London, 2007, p. 21.

³ European Commission, *Green Paper on Copyright and Related Rights in the Information Society*, EUR-Lex. [Online] <https://eur-lex.europa.eu/EN/legal-content/summary/green-paper-on-copyright-and-related-rights-in-the-information-society.html>, accessed 31.08.2025.

⁴ N. R. Dominte, *Dreptul proprietății intelectuale*, Ed. Solomon, București, 2024, p. 388.

Comparative Analysis of the Limits of Copyright in the Digital Space

By copyright limit is meant the right granted by law to users to use a work protected by copyright, to exploit it in certain well-determined situations, without the author's consent being required and without paying any remuneration.

We ask whether the right to reproduce the work could be the subject of such a copyright limit, and the answer is a positive one, for example the private copying limit.

Next, we will analyze the effects of these limits, effects that are, as the case may be, positive or negative.

2. Transformation and positive effect on creativity

Transformation of a work is understood, according to art. 37 of Law no. 8/1996: „a private transformation, which is not intended for and is not made available to the public” and, depending on the result of the transformation, respectively „a parody, a caricature or a pastiche, provided that the result (parody, caricature or pastiche) does not create confusion regarding the original work and its author”⁵.

We corroborate this article with the text of art. 5 para. (3) letter k) of Directive 2001/29/EC: „Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases: (k) use for the purpose of caricature, parody or pastiche”⁶.

As we have seen, the transformation, or rather the use of the main work to create a derivative, can take the form of parody, caricature and pastiche, respectively. In addition, the author's consent or the payment of remuneration are not required for the creation of such a work⁷. From our point of view, this type of transformation leads to the augmentation of creativity, in order to modernize existing means. In order to better understand the concepts used, we will analyse the following practical case.

Thus, in *Campbell v. Acuff-Rose Music, Inc.* (1994) the Supreme Court of the United States had to analyze how the fair use doctrine is applied to the parody of a song. In this case, it was shown that the rap group 2 Live Crew had made a parody of the song entitled „Oh, Pretty Woman” by Roy Orbison, without the consent of Acuff-Rose Music (which exercised the patrimonial prerogatives of the copyright on the song). The Court determined that the parody represents an application of fair use, a use of a transformation, despite the fact that the Court of

⁵ Law No. 8/1996 on Copyright and Related Rights, published in the Official Gazette of Romania, Part I, [Online] <https://legislatie.just.ro/public/detalii/document/7816>, accessed 30.08.2025,

⁶ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22 June 2001, p. 10. [Online] <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32001L0029>, accessed 30.08.2025.

⁷ I. Macovei, *Tratat de drept al proprietății intelectuale*, Ed. C. H. Beck, București, 2010, p. 469.

Appeals had determined that the conditions were not met due to the commercial nature of the use of the parody⁸. The Court used the text of the Copyright Act 1976 to establish the basis for the application of the fair use rule in this case:

„Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors”⁹.

Parody, in the Court's view, alludes to the original work which it does not imitate, but may distort. This refers to a work which combines the motifs, theme, artistic instruments of a literary or musical work of a particular author, the aim being to obtain a satirical, even humorous image of the basic work¹⁰. Derivative works, in other words, must meet the condition of originality, even if, quantitatively, it is limited. The Supreme Court showed, in this way, that the message of the parody established by 2 Live Crew was different from the main work. The amount of lyrics taken by 2 Live Crew was consistent, but this does not mean that they copied the song and that „it is necessary that the heart of the song” is also found in the parody so that the public can discern the main work¹¹. The main work was about a romantic muse, while the parody introduced a secondary meaning, also referring to parental responsibility¹².

As we have seen, the fair use rule seems to be equal to the limits that we find in our legislation, but the possibilities of interpretation of the court appear to us to be broader. Is it fair use an equivalent for derivative works or for works arising from the transformation of original works? The answer, as it results from the American doctrine, is negative. We have seen that the way a work is used can

⁸ *Campbell v. Acuff-Rose Music, Inc.*, 1994, [Online] , <https://supreme.justia.com/cases/federal/us/510/569/>, accessed 1.09.2025.

⁹ United States Code §107 (American Library of Congress), [Online] <https://www.copyright.gov/title17/92chap1.html#107>, accessed 1.09.2025.

¹⁰ I. Macovei, *op. cit.*, p. 469.

¹¹ *Campbell v. Acuff-Rose Music, Inc.*, 1994, [Online] <https://supreme.justia.com/cases/federal/us/510/569/>, accessed 1.09.2025.

¹² *Idem.*

Comparative Analysis of the Limits of Copyright in the Digital Space

end up transforming it and the question has been asked whether this transformation brings with it a copyright for what was derived from the main work¹³. The purpose for which the work is used, the themes or methods used in the transformation of the work, the nature of the work, the quantity taken from the main work and the effect on the market, the economic effect are very important. This transformational character of a work and which brings with it elements of its own originality can be qualified, on the one hand, as fair use, and, on the other hand, can be included in the pattern of the derivative work. Not all forms of works that transform other works are included in the notion of fair use. Moreover, the criteria for including a work in fair use do not use the term transformation, but general notions.

A delimitation was made including the way to use a certain work, in a productive manner or not. Thus, the use of a work in the sense of transforming it is productive, but not always the productive use also has the role of transforming the work. Fair use needs a productive use that could be better discerned in the case of *Sony Corp. of America v. Universal City Studios Inc.* since 1984. Thus, productive use means a reproduction of the author's work for an intrinsic use such as for criticism or teaching purposes. However, it has also been established that productive use must be evidenced by bringing a benefit to the public, a benefit that exceeds what the original work already brought¹⁴. In other words, fair use is an instrument that helps to achieve public policy goals, goals that take into account the well-being of society and its evolution.

In the aforementioned case, the question was raised whether the sale of recording equipment infringes copyright when the user records an episode of his favorite show for personal use. The plaintiff showed that copyright is infringed by consumers discussing television shows without express consent¹⁵. However, the Supreme Court has ruled that this recording for personal and non-commercial purposes constitutes fair use. We cannot classify it as a derivative work, but it is an application of the fair use doctrine, falling within the norms established by statutes. Such use is also within the limits of copyright in Romanian law, being similar to fair use. A question that we ask ourselves, just as a „what if...” question, is the one that concerns works made by robots and whether they can be considered derivative works. The answer is „it depends”. The author will be considered a living being, such as the manufacturer of that robot¹⁶.

¹³ M. W. S. Wong, „Transformative” User-Generated Content in Copyright Law: Infringing Derivative Works or Fair Use?, in *Vanderbilt Journal of Entertainment & Technology Law*, Vol. 11, 2009, p. 1075, [Online] <https://scholarship.law.vanderbilt.edu/jetlaw/vol11/iss4/11/>, accessed 2.09.2025.

¹⁴ *Ibidem*, p. 1107.

¹⁵ *Sony Corp. of America v. Universal City Studios, Inc.*, 1984, [Online] <https://supreme.justia.com/cases/federal/us/464/417/>, accessed 2.09.2025.

¹⁶ B. Schafer, D. Komuves, J. M. N. Zatarain, L. Diver, *A Fourth Law of Robotics? Copyright and the Law and Ethics of Machine Co-production*, in *Artificial Intelligence and Law*, Vol. 23, no. 3, 2015, pp. 217-240, DOI: 10.1007/s10506-015-9169-7, accessed 2.09.2025.

3. Fair Use and User Generated Content

The User Generated Content doctrine refers to those content elements, such as images, video, audio, written materials, which are created and uploaded to certain platforms by users. Of real interest is their freedom to upload these materials to platforms, without the platforms being directly involved. In other words, platforms represent intermediaries between users and the author, in the legal sense, of the work that has been uploaded. We are thus discussing You Tube, Tik Tok, Instagram and other such platforms that offer users the possibility of uploading to their own page, the possibility of producing, of distributing content locally and globally (depending on the privacy criteria applied by the user)¹⁷. In this way, without the users' wish, various rights conferred by intellectual property law are violated, including copyright, patents, and trademarks. With this role as intermediaries, platforms have reached the point where they must establish a balance between the users' idea of creativity and the obligation to prevent or eliminate infringement of intellectual property rights¹⁸.

In the United States of America, the Digital Millennium Copyright Act aims to help platforms achieve the aforementioned objective by protecting them: in the event that a notification or complaint is made regarding the violation of intellectual property rights, the platform has the obligation to remove the content distributed by the user in violation of legal norms as soon as possible. However, given the mask of neutrality attributed to the platforms in this context, they are not required to preview the content to be distributed by the user, which is why responsibility will only be attributed to them when it is proven that they were aware of and ignored the violation of a distribution that violates the rights of individuals. In other words, rather, the passive conduct of the platforms will lead to their liability¹⁹. User Generated Content technology has its own advantages and disadvantages. One of the advantages is that it provides users with the opportunity to have access to a wider range of participants who can see, read and share the content created by a certain topic²⁰.

A way to protect the advantages of content distribution would be to establish more filters to verify user conduct by determining whether the content was transmitted in good or bad faith, or, in other words, to have filters to determine whether the distribution of a certain content infringes copyright and other related rights. However, these would also bring with them certain limitations or

¹⁷ F. Asadi, Digital Platforms and Intellectual Property Infringement: Exploring Legal Liability for User-Generated Content in the Context of Digital Media, in *Legal Studies in Digital Age*, Vol. 2, no. 1, 2023, p. 39, [Online] <https://jlsda.com/index.php/lsla/article/view/10/9>, accessed 29.10.2025.

¹⁸ *Ibidem*, p. 40.

¹⁹ *Ibidem*, p. 43.

²⁰ M. S. Sawyer, Filters, Fair Use, and Feedback: User-Generated Content Principles and the DMCA, in *Berkeley Technology Law Journal*, Vol. 1, [Online] <https://ssrn.com/abstract=1369665>, accessed 29.10.2025.

shortcomings that would be placed on the shoulders of online platforms, such as the need to immediately and automatically determine the case of copyright infringement (as soon as the material has been introduced and distributed on the platform), as well as the method of determining this copyright infringement, for the analysis of which human activity is still necessary. However, once these filters effectively block content suspected of violating copyright, it will no longer have to undergo a human analysis. These are assumptions, in the sense that the people who will analyze the copyright infringement case will have to be paid, and the platforms will want to reduce such costs. By blocking content before it is analyzed by a human being, one ends up in a situation where the purpose of the user-generated content doctrine is jeopardized, namely that of helping to develop creativity and to transmit more easily the information contained in copyrighted works²¹.

In this context, we address the question of whether the way of analyzing and interpreting through automatic filters for detecting copyright infringements would not actually be at an impasse in the face of the need to analyze qualitative situations that need to be investigated in the sphere of the fair use doctrine. Of real interest to us in this context is the way in which, on the one hand, the filters through AI work, and, on the other hand, the ways in which cases of violation of fair use are investigated seem to us to be important. Thus, the respective filters try to build a bridge between the author's visual, auditory footprint and other similar works with identical or similar content. They work on the basis of a database that will ultimately provide a list of these links that may exist between the work distributed by the user and the work protected by copyright (quantitative analysis). Regarding the analysis that the person carries out when trying to find out whether the distribution made by the user has violated copyright by exceeding the limit established by fair use, we note a research that will relate to the characteristics of the use, the nature of the work, the elements or the number of elements and their quantity taken over, as well as the consequences that such use has on the market²². These elements are subject to a qualitative analysis through understanding the factual context, through understanding the internal and external market, as well as for an accurate interpretation that cannot be achieved by a filter or artificial intelligence. Therefore, the simple blocking of a content because the filter based on artificial intelligence has created some links with certain works and the distributed element, cannot be considered sufficient evidence to establish that there is a definite infringement of copyright. At this point, the human component is still necessary; the interpretation that the person makes between similar cases and establishes the conclusion based on fact and law is different. We add to these the way of analyzing the limit of copyright established by fair use, namely the purpose and character of the use together with the nature of the work protected by copyright. These are qualitative criteria of analysis, despite the fact that the third

²¹ M. S. Sawyer, *op. cit.*, p. 45.

²² *Ibidem*, p. 29.

criterion of analysis of the implication of the aforementioned doctrine is the quantity and substantial period of a particular part used in connection with a copyrighted work which would appear to us to be quantitative²³. However, the last quantitative criterion for the analysis of this doctrine is not a decisive one. What is decisive is the establishment or finding of the author's imprint on the work or within the copied work.

As M. S. Sawyer states, it is necessary to find the central element or the element that relates to the essence of the work within the copied work and not necessarily to establish that the entire work has been copied because in such a situation there would be a possibility that the fair use doctrine and its principles would not be violated²⁴. Therefore, AI-based filters will not have to automatically determine that a work infringes copyright, but will have to be completed by the interpretation that the human being will give to the entire factual situation, through its legal qualification, taking into account the criteria mentioned above²⁵. If the two components are not combined, it will lead to holding platforms accountable for blocking the distribution of content in breach of trust, in the event that the inclusion of reasoned opinions of human beings is not also resorted to (this is how we view section 512 of the Digital Millennium Copyright Act, in the sense of its amendment in order to establish the legal responsibility of content distribution platforms, for the situation in which they would delete distributed content without adequate verification, in the absence of a substantiated analysis based also on the human factor)²⁶.

So-called „Feedback loops” have also developed, which are noticeable in the way in which content blocking by platforms ends up influencing the market for copyrighted works. Thus, in such a situation, there is a certain obligation for copyright holders to conclude license agreements for the smallest works, for videos of a few seconds, for fear of being put at risk when distributed²⁷. For example, a film producer editing a documentary wanted to include a character singing a verse from a famous song in the video, but will no longer do so because there is not much certainty regarding copyright, so the producer will be forced to conclude a direct licensing agreement for the song rather than having the possibility of a future lawsuit before the court when the film is released²⁸.

We must not lose sight of the fact that the fair use doctrine, which we see applied in the continuation of user generated content, is a source of verification of how the latter is applied. However, this doctrine is difficult to apply or determine due to the way in which the factors that establish the conduct that constitutes fair

²³ M. S. Sawyer, *op. cit.*, p. 29.

²⁴ *Idem*.

²⁵ *Ibidem*, p. 42.

²⁶ M. S. Sawyer, *op. cit.*, p. 47.

²⁷ *Ibidem*, p. 36.

²⁸ *Ibidem*, p. 36.

Comparative Analysis of the Limits of Copyright in the Digital Space

use are interpreted²⁹. Above we could see what are the criteria that must be taken into account when discussing fair use, and, further, we will establish those that must be analyzed in terms of the limit of user generated content. We will have as a legislative example the Copyright Act of Canada which shows that the material included and that exists in a public manner can be distributed without violating copyright if four criteria are met:

- The purpose of use, distribution must be non-commercial;
- The original work and its source must be mentioned such as a link, the volume it is part of, etc.;
- The person who is going to distribute the material has sufficient evidence to consider that the original work does not violate copyright;
- This use does not negatively influence the current or future exploitation of the original work or its market³⁰.

In the United States of America, we do not find such clarity regarding the criteria to be analyzed, their role and weight in determining compliance or, as the case may be, infringement of copyright by users. However, greater clarity is found in Canada, as we could observe from the way in which the criteria were established. Showing the source of the original document and limiting use to non-commercial purposes demonstrates that we can establish an objective link between the framework, original work and the distributed work.

In this regard, I would like to bring to the fore an example of the activities that require compliance with these criteria (similar to those in the Romanian legal system), such as those in the nail industry made with polygel. In this regard, I bring to mind the artists who sculpt and draw these nails using the various characters from literature, from the series broadcast on the Netflix platform. We ask if this artists infringe intellectual property rights through the activities they carry out. The answer is more nuanced, we also add that the distribution of images with the works produced is done through the Instagram and Facebook platforms in the form of Reels. Thus, in this situation we could observe an application of user generated content, the rules in the Romanian legal system being similar to those in the Canadian legal system: art. 36.3 Law no. 8/1996 on copyright and related rights³¹. However, we are thinking about the educational purpose brought into view (the person may want to lead certain courses to guide students in drawing characters). Regarding reels that include references to films, even with attached video clips we

²⁹ F. Guzman, *The Tension between Derivative Works Online Protected by Fair Use and the Takedown Provisions of the Online Copyright Infringement Liability Limitation Act*, in *Northwestern Journal of Technology and Intellectual Property*, Vol. 13, no. 2, 2015, p. 181, [Online] <https://scholarlycommons.law.northwestern.edu/njtip/vol13/iss2/4/>, accessed 29.10.2025.

³⁰ *Ibidem*, p. 191.

³¹ Law No. 8/1996 on Copyright and Related Rights, art. 33, paragraphs (1)–(2), published in the *Official Gazette of Romania*, Part I, No. 60, [Online] <https://legislatie.just.ro/public/detalii/document/7816>, accessed 29.10.2025.

will have to take into account the duration of the downloaded clip: an average limit of 180 minutes (Instagram) or 60 seconds (Tik Tok) is considered legal³².

Why is all this important? The answer lies in the growing popularity of social media, hence the need to define „shareable content” through the „Terms and Conditions” section. When a post is made through these platforms, the post can go viral in a matter of seconds, which is why a copyright infringement can be proven in a matter of seconds³³. Instagram has created a content verification function as a result of these situations that could arise. Of real interest to us is the new job of content creators and influencers that has a real impact on everyone's lives and on the economic aspects of society, a job that involves distributing such materials. In this context, it is desired to create a formula to protect the rights of influencers against lawsuits that could arise in the field of intellectual property law³⁴. An example of this is the artist Richard Prince who brought to the forefront the question of how Instagram understands to introduce the notion of „Fair Use” within the related terms and conditions. We consider the case of the artist who presented a new collection in 2014 at the Gagosian gallery. For this collection, the artist had printed several photos from Instagram and placed them on canvas, adding his own comments at the bottom of each image, a situation that gave rise to a lawsuit filed against him³⁵. Other examples can come from the commercial sphere when, in the course of a campaign, images of a person on Instagram are used without mentioning them. Instagram has references in its terms and conditions to the fact that the content posted by a certain person belongs to them as the owner of a property right over it³⁶. People who post content must therefore request permission to distribute materials belonging to other subjects³⁷.

We also ask ourselves, in this context, whether generative AI will be able to pose certain problems in the field of User Generated Content. Each of these tools seeks to establish a link with the artistic, creative side, and generative AI amplifies these as a method of transforming art. Therefore, numerous criticisms have also emerged, such as that, on the contrary, generative AI has become an obstacle to

³² Epidemic Sound, *What is the 60-second music limit on TikTok?*, accessed 29.10.2025, [Online] <https://help.epidemicsound.com/hc/en-us/articles/26248455901458-What-is-the-60-second-music-limit-on-TikTok>, accessed 29.10.2025.

No Author, *The Dos and Don'ts of Social Media Trends and Music Copyright*, in *Business Law Review (University of Miami)*, [Online] <https://business-law-review.law.miami.edu/dos-donts-social-media-trends-music-copyright/>, accessed 29.10.2025.

³³ C.E. Kim, *Insta-Fringement: What is a Fair Use on Social Media?*, in *Journal of the Marshall Review of Intellectual Property Law*, Vol. 18, 2018, p.102, [Online] <https://repository.law.uic.edu/ripl/vol18/iss1/5/>, accessed 30.10.2025.

³⁴ *Ibidem*, p. 106.

³⁵ *Ibidem*, p. 107.

³⁶ *Idem*.

³⁷ *Ibidem*, p. 122.

Comparative Analysis of the Limits of Copyright in the Digital Space

the person's creativity³⁸. According to Art. 13 of the Charter of Fundamental Rights, AI should be seen, rather as an auxiliary tool, as an element that is part of the artistic freedom of the person³⁹. It is argued, in this sense, that works created with AI can be considered as derivative works, transformations of original works: not only must the result be legally protected in the form of agreed use such as fair use or user generated or as a limit of copyright, but also the introductory part when the artist chooses the works for generation and transformation⁴⁰. In other words, it should be borne in mind that copyright is not without rules, absolutely, but is one that has exceptions, taking into account the rights of users/artists. As examples of such Generative AI we offer Chat GPT, DALL-E⁴¹. The taking of original works and the infringement of copyright occur not only at the time of including the works within them, but also during the actual generation of the derivative work. It was considered that the result is a reproduction within the meaning of copyright and that it should not be considered an infringement of intellectual property rights⁴². The European directive mentioned at the beginning of the paper should be expressly extended to this sphere (precisely for this reason we would see an application of fair use in the matter of generative AI; at the European level, work has been and is being done to create a regulation through the AI Act, from which human creativity can benefit, without compromising technological evolution⁴³). However, the question is often raised whether or not the owner of the original work should give consent for the work made in this way⁴⁴, and if the regulation included these derivative works in the notion of reproductions then they could be made without express request (we could also refer to works of applied art and think about how generative AI could be included in that sphere; we would think about what legal regime we could apply⁴⁵).

³⁸ J. Lennartz, V. Kraetzig, *Forbidden Fruits? Artistic Creation in the AI Copyright War*, in *International Review of Intellectual Property and Competition Law*, Vol. 56, 2025, pp. 241-245, DOI:10.1007/s40319-024-01551-8, accessed 30.10.2025.

³⁹ *Idem*.

⁴⁰ *Ibidem*, p. 243.

⁴¹ S. Thongmeensuk, Rethinking Copyright Exceptions in the Era of Generative AI: Balancing Innovation and Intellectual Property Protection, in *Journal of World Intellectual Property*, Vol. 27 2024, pp. 278-295, DOI:10.1111/jwip.12301, accessed 29.10.2025.

⁴² T. W. Dornis, *Generative AI, Reproductions Inside the Model, and the Making Available to the Public*, in *International Review of Intellectual Property and Competition Law*, Vol. 56, no. 5, 2025, pp. 909-938. DOI:10.1007/s40319-025-01582-9, accessed 30.10.2025.

⁴³ G. Fontana, *Intellectual Property Protection in the Era of Artificial Intelligence and the Problem of Generative Platforms*, in *Journal of World Intellectual Property*, pp. 1-19, DOI:10.1111/jwip.12355, accessed 30.10.2025.

⁴⁴ K. de la Durantaye, *Control and Compensation. A Comparative Analysis of Copyright Exceptions for Training Generative AI*, in *International Review of Intellectual Property and Competition Law*, Vol. 56, 2025, pp. 737-770, DOI:10.1007/s40319-025-01569-6, accessed 29.10.2025.

⁴⁵ L. Bently, E. Derclaye, C. Sganga, et al., *The Protection of Works of Applied Art under EU Copyright Law – Opinion of the European Copyright Society in Mio/konektra (Cases C-580/23*

The AI Act or the European Union's Artificial Intelligence Act establishes three categories for classifying generative AI applications: with unacceptable risk, with high risk (for example, a CV scanner that creates a hierarchy of people who want the job) and with low risk⁴⁶. The implementation of this act will take place until 2027. Of real interest to us is the text that includes the task for the AI generative tool, a text that could include elements of originality and be protected by copyright itself⁴⁷. In this way, the AI also learns, but it can happen that it forgets what it previously generated. By continuous learning and by giving commands in clear text, this will not happen and it will perform based on the original instructions that express the personality of the human who performed them⁴⁸.

4. Conclusion

The exceptions that we have analyzed in this study can be seen as user rights exercised by virtue of freedom of expression, which represents a key element in the way in which the person's originality is manifested⁴⁹. Copyright protection on content distribution platforms is achieved primarily through the law, and with the help of the „Terms and Conditions” section of the respective platform. In addition, we consider the doctrines that provide the foundation or wall of protection against copyright infringement, namely Fair Use and User Generated Content. Regulating the limits of copyright only creates a space of balance between the interests of the user and those of the author of the work being distributed. The filters that the platforms will apply to establish copyright infringement, along with the human component, will also create a space conducive to the development of AI and human creativity. The fact that there is legislation that is being created as the information society develops only shows that more solutions will emerge to maintain the balance. AI becomes a tool that promotes, in this way, human creativity, sometimes „mixing it” to better value it. There are many concerns about copyright infringement, but the law is evolving. For now, in our opinion, the User

and C-795/23), in *International Review of Intellectual Property and Competition Law*, Vol. 56, 2025, pp. 798–828, DOI:10.1007/s40319-025-01579-4, accessed 29.10.2025.

⁴⁶ A. Guadamuz, *The EU's Artificial Intelligence Act and Copyright*, in *Journal of World Intellectual Property*, Vol. 28, 2025, pp. 213–219, DOI:10.1111/jwip.12330, accessed 29.10.2025.

⁴⁷ F. Mazzi, *Authorship in Artificial Intelligence-Generated Works: Exploring Originality in Text Prompts and Artificial Intelligence Outputs through Philosophical Foundations of Copyright and Collage Protection*, in *Journal of World Intellectual Property*, Vol. 27, 2024, pp. 410–427, DOI:10.1111/jwip.12310, accessed 29.10.2025.

⁴⁸ V. Iaia, *The Elephant in the Room of EU Copyright Originality: Time to Unpack and Harmonize the Essential Requirement of Copyright*, in *Journal of World Intellectual Property*, Vol. 28, 2024, pp. 471–490, DOI:10.1111/jwip.12343, accessed 29.10.2025.

⁴⁹ Elena Izyumenko, *The Freedom of Expression Contours of Copyright in the Digital Era: A European Perspective*, in *Journal of World Intellectual Property*, Vol. 19, no. 3-4, 2016, pp. 115–130, [Online] <https://doi.org/10.1111/jwip.12057>, accessed 29.10.2025.

Comparative Analysis of the Limits of Copyright in the Digital Space

Generated Content doctrine should be taken up and included in the law to cover the notion of „use” more generally.

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