The 10th session of the Expert Mechanism on the Right to Development
Item 5 of the Provisional Agenda
Implementation of the mandate and programme of work –
Focused thematic discussion and interactive dialogue
Palais des Nations, Room XXI, Geneva

Artificial intelligence, cultural rights and right to development

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Statement by Ms. Carole Tongue,
International Federation of Coalitions for Cultural Diversity

Introduction

Sincere thanks to the members of the Expert Mechanism---Ms. Klentiana Mahmutaj, and OHCHR Secretariat for this opportunity, on behalf of the International Federation of Coalitions for Cultural Diversity. IFCCD is a civil society organisation bringing together some thirty coalitions across the world representing creators: authors, performers, artists, independent producers, and publishers in the book, film, television, music, live performance and visual arts sectors. We base our work on furthering the implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural expressions.

Principles 5 and 6 of its guiding principles read as follows:

"Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have a fundamental right to participate in and enjoy"[i].

"Cultural diversity is a rich asset for individuals and societies. [Its] protection, promotion and maintenance […] are an essential requirement for sustainable development for the benefit of present and future generations"[ii].

In addition, there are two key cultural rights we need to consider when contemplating AI regulations:

1. *The right to enjoy the arts*; and

2. *The right to the protection of the moral and material interests resulting from any […] literary or artistic production of which [one] is the author – without discrimination*[iii].

What is Generative AI (GenAI)?

Generative AI can be described as a category of AI that produces new content – text, images, music, for example, without direct human input, however based on their training in replicating the patterns of the works, performances, and productions of human beings.

Challenges risks and benefits of GenAI

A challenge for civilisation

As we know, the right to development is a human right that entitles human beings *to "enjoy economic, social, cultural and political development, in which all human rights can be fully realized"*[iv]. Moreover, the UN Declaration on the RtD identifies "the human person" as "the central subject of development"[v]. It underlines the right to an "active, free and meaningful participation in […] and in the fair distribution of the benefits resulting [from development]"[vi].

In the context of the cultural and creative ecosystems, GenAI therefore constitutes an existential and civilisational issue as it risks sidelining and displacing humans in the creative process.

As human beings, we have evolved through our ability to create and communicate from cave painting and writing to the present day. Skills we now have are as a result of that creativity and communication with others. The visual arts, the written word and song have all been used to underpin our development.

Furthermore, we express our political convictions through our art and other kinds of creativity. Myths, like the Iliad speak about love, war, vice and virtues, about how we interact, how we make peace. Creativity is thus also a political tool contributing to our societal and democratic development.

We must not undermine our creators. It would be tantamount to taking away our agency to create and communicate. To do so we would be hindering human evolution and our development as a species. This should be plain common sense.

Risks and benefits of GenAI

We know that artificial intelligence, including generative AI programs can be useful tools. However, to safeguard human creativity, truthful content and the rights of authors, creators, and performers, it is vital that AI models are developed and used in a legal, sustainable, and ethical manner. We must assert our stance in the face of technocratic mechanistic AI voices that cast our concerns as a barrier to innovation.

Organisations defending creators' rights have already written to large AI companies refusing to allow their work to be used except under some clear conditions/principles.

As the UK Authors 'Licensing and Collecting Society has said:

"[AI] should not be treated as something independent of, or a substitute for, an author's original work, insight, and creativity. Whether use of that work comes from human programmers of the software, or where author-created content is used to "teach," an AI program knows nothing for itself and only reuses authors' work"[vii].

In summary:

1. GenAI creates "stuff" which is based on the past work of creators. Creators work in the present and foretell the future. That is a vital role in society.

2. GenAI uses algorithms and recommendation systems which stand between the creator's work and individual citizen. These systems hinder the discoverability of diverse cultural content and narrow cultural choices. This is a direct threat to the diversity of cultural expression.

3. GenAI use of creator's work without proper consent and remuneration threatens the livelihoods of our creators and their diverse creative works.

4. We are facing the potential undermining of national and international frameworks of human rights, author's rights and copyright law.

Further guiding principles in addition to the ones enshrined in 2005 UNESCO Convention

Implementing the RtD requires that States 'take steps to eliminate obstacles to development resulting from failure to observe [human rights, including] cultural rights"[viii].

The recent European Parliament report adopted in January 2024 on the rights of authors in music streaming market[ix] sets out the principles in order to:

1. Guarantee the possibility for artists and authors to reserve their rights and grant licenses for the use of their works for AI training, development or design purposes.

2. Guarantee transparency on copyright-protected generative AI training content: Including through requiring generative AI systems to document and make available to the public a sufficiently detailed summary of the use of their training data.

3. Create a clear and visible label to inform the public about purely AI-generated works that do not involve the expression of the author's personality and creativity.

We need regulation like this to be mandatory and that carries penalties for non-compliance. Without this, we will continue to see the unremunerated exploitation of creator's work.

The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, that was open for signature in September 2024, reminds us that one of the fundamental applicable international law that exist with respect to regulating the lifecycle of AI systems is human rights law[x].

Let me also refer to the Pact for the Future and its annex, the Global Digital Compact, adopted a month ago by the UN General Assembly[xi] as they both offer fertile ground for actionable follow-up to political commitments in considering the development and implementation of human rights-based AI regulation.

We are pleased to note Action 11 of the Pact and the pledge "to protect and promote culture [as an] integral component […] of sustainable development"[xii]. IFCCD considers that the upholding of such commitment can only be achieved by the adoption of a post-2030 SDG dedicated to culture, as advocated by the #Culture2030Goal Campaign.

As per the Global Digital Compact, it is worth highlighting its Objective 5 on "enhancing international governance of [AI] for the benefit of humanity"[xiii], including through '[H]arnessing [AI] benefits and mitigating 5 risks in full respect of […] international human rights law[xiv] – taking into account the [UNESCO] Recommendation on the Ethics of [AI][xv] and ensuring that AI application […] fosters diverse cultures and languages[xvi].

Conclusion

In closing: IFCCD commends the Expert mechanism for bringing forward this too often 'left behind' mater through today's discussions. We should ensure cultural rights and creative ecosystems are systematically integrated in the debates and decisions on AI regulation. We ought to monitor the ratification process, potential use and impact of the CoE Framework Convention to that aim, in particular in addressing risks and impacts arising from activities by private actors' – whether they are acting on behalf of public authorities or not[xvii]. And we ought to monitor the application of the European Union AI Act. Opportunities are also arising from the Pact for the Future and the Global Digital Compact follow-up – including the World Summit on the Information Society +20 review in 2025[xviii].

GenAI has already gone far without proper oversight. Already, those with a vested interest invariably characterize our human-centered demands as a bar to innovation. This masks huge commercial interest in an already unbalanced internet economy which already heavily favors those interests. We have to tackle these arguments head on. As stated by more of 20 000 worldwide creators "The unlicensed use of creative works for training generative AI is a major, unjust threat to the livelihoods of the people behind those works and must not be permitted"[xix].

We need to protect and promote the diversity of cultural expressions made by humans. They are the lifeblood of our societies. They give joy, are therapeutic, spur development, social cohesion and mutual understanding. They help us make sense of our lives and of the world. We threaten that at our peril.

Thank you.

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[i] UNESCO 2005 Convention, art. 2 – Guiding Principles, 5 – Principle of the complementarity of economic and cultural aspects of development.
[ii] UNESCO 2005 Convention, art. 2 – Guiding Principles, 6 – Principle of sustainable development.
[iii] Universal Declaration of Human Rights (UDHR) art. 27 and 2.
[iv] Declaration on the right to development (DRTD) art. 1.1
[v] DRTD, art.2.1
[vi] DRTD, art. 2.3
[vii] Authors' Licensing and Collecting Society (ALCS) |Authors and AI Principles
[viii] DRTD, art. 6.3

[ix] Initiative Report on cultural diversity and the conditions for authors in the European music streaming market, European Parliament | Committee on Culture and Education. Rapporteur: Ibán García Del Blanco 2023/2054(INI) Report - A9-0388/2023 | 4.12.2023

[x] This including with respect to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (CoE Framework Convention, preambular para. 14

[xi] United Nations General Assembly resolution A/RES/79/1 of 22 September 2024 United Nations General Assembly resolution A/RES/79/1 of 22 September 2024

[xii] Pact for the Future, para. 30

[xiii]Global digital compact (GDC), para. 7.5 – Objectives

[xiv]Global digital compact (GDC), para. 7 – Objectives, para. 52

[xv] Global digital compact (GDC), para. 7 – Objectives, para. 52

[xvi] GDC, para. 7 – Objectives, para. 53

[xvii] CoE Framework Convention, art. 3 – Scope

[xviii] GDC, para. 68

[xix]https://www.aitrainingstatement.org