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The impact of AI on creative industries, cultural rights, and the right to development

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Please check against delivery

Hello everyone.

Good afternoon. Thank you so much for this wonderful invitation to this extremely relevant topic. The interface between AI, cultural rights, the right to development and creativity, is quite urgent, and it's really important to have this forum. So thank you, and thanks to all present.

Disclosure, I am Brazilian, born and raised in Rio. I'm based in London since 2011 and have practiced IP law in Brazil, where I'm originally from. Now I'm a full time academic in the UK. You can take the person out of the law practice, but law practice stays with the person, so I have to say, views are my own as an individual researcher, not of any organizations, okay?

I'm a senior lecturer in intellectual property law at Brunel University in London, and also a bridging responsible AI divides fellow. That's a program funded by the AHRC in the UK, where I research responsible AI for heritage. I have to say second everything my distinguished colleagues said so far, and my area of expertise being on the interface between AI heritage and the law, I will now give a little bit of, legalese, I suppose to the conversation. But hopefully this will be interesting and trigger the discussions that we'll ensue after.

My project currently aims to understand how intellectual property law and practice, particularly copyright, can responsibly amass social cultural benefits of AI in the heritage sector, while protecting legitimate interests of creators in addressing broader social, ethical issues such as bias. These are things that we have already heard some of the colleagues referring to, and I find that to address this issue, purely copyright law is enough as a frame and bringing human rights, such as cultural rights, the right to development is crucial. So, my research considers these perspectives. My latest paper focuses on heritage research, AI for research and the challenges in UK copyright law and policy in regulating this space. And I find it really important to talk about research too, when we talk about cultural rights. And I'll talk a little bit more about that as we go on.

I have been contributing to consultations quite a bit recently. It's been a lot contributing with my colleagues at the grade program on various consultations, including to the, recent call for contributions on AI and creativity by the UN Special Rapporteur in the field of cultural rights. And I will make reference to some points in our response as well. So, this talk will kind of try to encapsulate some of my key findings on all these projects and policy contributions. I also coordinate network on heritage AI law. And as you can imagine, a lot is happening in that space as well.

The key points I want to deliver today is, first off, I think we need to make sure that we are defining AI in a way that will include all types of technologies that AI means. AI doesn't mean only

commercial generative AI. AI can also include non-commercial, homegrown models for research purposes, for example. And I think that there is a tendency to conflate AI with generative AI, commercial generative AI in debates. I think it's important that we try to remedy that so that when we are trying to discuss something, we know exactly what we are trying to regulate, and what criticisms we're making to the technologies at stake. And they can vary. The technologies can vary. The purposes for the use of this technology can vary as well. So I think it's important not to conflate AI with commercial generative AI.

Another issue I find in the current policy space is a reductive binary in this tension between AI firms and creative industries. Of course, it's extremely important that we analyze that the debates between these two sides of the discussion. But these are not the only stakeholders in the discussion, so only focusing on them leaves out such important perspectives. For example, heritage stakeholders, researchers, research stakeholders, and also vertical issues on each side of the spectrum. So, in the AI debate, some issues are within the side of the AI firms in itself, or within the side of the creative industries in itself. So, for example, are the licensing deals that are being firmed up now? Are they transferring down to the creators themselves? So, this is something that needs to be looked at from the side of the creative industries in itself, not only the AI firms versus creative industries binaries. So let's, I think, avoid this reductive binary is another key point I want to mention.

Another one is copyright. Copyright is a very important frame, but not the only frame. For example, I have some explanation, some basics on copyright law so that you can see where I'm getting to. A lot of materials that are being used to train AI models that are being used in the context of AI are not protected by copyright anymore. And if we talk only about copyright, we might be leaving out traditional knowledge, indigenous rights. And also, I don't think that copyright law encapsulates, for example, the environmental discussions that we should be having, which are very fitting in the cultural rights and the right to development context. So, I think the cultural rights and the right development perspectives are extremely important in addressing these points above, so that's why so it's welcome that we're having this conversation today.

Does AI infringe copyright? The first thing I wanted to flag is there is such a thing as a duration for copyright. The Bern convention establishes a minimum standard of the life of an author plus 50 years. Duration is something that varies too, depending on the kind of material, and also the country that is legislating. But you can see where I'm trying to get here. If you're talking about traditional cultural expressions, for example, that have been passed on through generations, there might be a lapse of copyright at that stage. So, copyright will not be the best mechanism to support that community, that has that traditional knowledge or traditional cultural expression. It is an important perspective, though, to consider, and copyright is one of the major barriers that can hinder the decision to digitize items, for example, under copyright.

Because AI uses data that is protected by intellectual property, in particular copyright, such as text, images, and sound. So, unless there is an exception in copyright legislation to allow these uses, such as the text and data mining exceptions. So, you might have heard about text and data mining exception discussions. This is pretty relevant to the AI debate.

If there is no exception applicable and if there is still copyright. If copyright hasn't expired yet, then you will need a license. But is copyright the only issue? So, a few research projects are starting to show that even out of copyright, items in a heritage collection might still be subject to contractual restrictions if the collection, for example, has been digitized by another party. So, a lot of organizations, heritage organizations, partner, for example, with commercial partners. So, there is public private partnerships in many cases. And what is the role of contracts then in that space is something that also deserves attention, so that is beyond the mere copyright regulation space.

I find it really helpful when these research projects write up in their outputs. What were the challenges that they encountered in terms of the application of the laws and copyright regulation? Because it gives us evidence of what are the issues being experienced. So, this is, this was a research project using AI technology for historical research.

But as I said, copyright and contract is not the only frame. Let's talk a little bit about cultural rights and understand where does IP and AI sit in this framework? So, Klentiana rightly mentioned the very important Article 15 of the International Covenant on Economic, social and Cultural Rights. That is the provision in the human rights law that also gives some basis for copyright claims, broadly speaking, or the moral and material interests of creators in Article 15(1)(c). But you see, it is in the context of the right to take part in cultural life, which also includes the right to enjoy the benefits of scientific progress and its application. So, we need to look at this provision as a whole and try to find what are the core interests in each of these parts, right? So that we can achieve the balance that this provision is inviting us to achieve. Very important provisions or I suppose, commentaries on these on this provision include general comments 17, 21, 25, and also Special Rapporteur reports that expand and apply this provision into thematic areas.

Importantly, General Comment 17 on Article 15(1)(c) on the moral material interests of creators draw a distinction between human rights and intellectual property rights. In that first and foremost, human rights are inherent to the human person as such, and intellectual property rights are means by which States seek to provide incentives for inventiveness and creativity, so the scope of protection of these moral material interests doesn't necessarily coincide with what is referred to as intellectual property rights under international legislation or international agreements. And I think this is really important because what I'm am finding at the moment is again another kind of conflation of the copyright system as per national legislations as having a human rights basis completely, whereas I think we need to dig a little deeper and try to understand what is the moral material interest from a human rights perspective? And we are looking at human beings much more than we are, for example, at the profit interests of big companies or even in the creative industries. You see what I mean? So, it is important then to not necessarily equate intellectual property to human rights and understand what the dimensions, the human right dimensions and intellectual property are.

Also, intellectual property is a social product and has a social function. So, what is that social function that we should be trying to promote when we regulate intellectual property? It is linked to the right to participate in cultural life, which in human rights also protects the right of minorities, the rights of indigenous peoples, which is not necessarily contemplated by national copyright legislation.

Another provision that is really important to mention is General Comment 21 on the right of everyone to participate in cultural life and the dimensions of participation, access and contribution, availability, accessibility and acceptability of cultural polices.

Our response in the Bridging responsible AI divides (BRAID) program flagged what are some of the issues that exist currently in the AI policy space in terms of the right to take part in cultural life. And one of the things is that meaningful and effective consultation is needed with a wide range of stakeholders in policy debates. This will allow this right to be addressed and not every stakeholder that should be consulted is having a voice at the moment, so it is important to include more stakeholders into this debate, and cultural rights give us the frame to do so.

I also wish to discuss, and I'll just pass to, we can go back to other points that expand what I said at the minute, but I just want to finalize with a point on the environment, cultural rights and sustainable development. AI can be harmful or helpful to the environment, is one of the discussions that we currently have. It depends. It can be both. It depends on what kind of AI we're talking about. How it's used. If we're not conflating AI with generative AI. Generative AI has an impact on natural

resources, water, energy, rare minerals, data centers, and resources in the Global South are resulting in extractivist practices, and this significantly impact local communities, minorities, indigenous groups. So, these groups will have an issue in exercising their cultural rights and their ability to create if those very important resources, which are crucial for their life, subsistence in culture are disappearing, right? So, this is an important perspective that should be contemplated when we talk about creativity and try to look at these moral and material interests of creators beyond solely the copyright discussions.

I will leave it at this with some examples of best practice of how communities can be included in the discussion, both public policy wide, and internal policies in organizations. There are things that can be done at organizational level and in public policy level, and we can discuss this more at the debate.

Thank you.

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