The 10th session of the Expert Mechanism on the Right to Development

Item 5 of the Provisional Agenda
Implementation of the mandate and program of work –
Focused thematic discussion and interactive dialogue
Palais des Nations, Room XXI, Geneva

Artificial Intelligence, Cultural Rights and Regulation

Tuesday 29 October 2024, 15h to 16h30

Introductory remarks
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The ability of humans to create art and culture and enjoy its fruits has been instrumental to our evolution as a species. Creativity forms part of our existential tool kit, through which we have communicated for thousands of years with each other and future generations. It is one of the ways in which we build our heritage as the most evolved species on the planet.

We painted, we carved, we played music and we sang in verse our personal and collective tragedies, enriching our history and social experience. At the core of our artistic behaviour, both as creators and consumers of creativity, lies our ability to heal and make sense of the universe and the complex world we created. We did all of this before we could even write and publish, let alone use computers.

But AI has arrived and it is here to stay. It has the potential to transform society radically, from improving education and healthcare to revolutionising, amongst others, science, government services as well as cultural and creative landscape.

To that end, it has brought innovative ideas, some of which have great potential for disseminating art and culture, democratising creativity and expanding inclusiveness. Others could have potentially devastating effects on artists, authors, musicians, actors, designers, to mention a few, as well as the broader demographic of art consumers and their right to enjoy culture and freedom of cultural creativity. They may undermine the very existence of human creativity as we know it and our right to enjoy it freely.

By way of illustration, there is a risk that Generative AI, through its bias outputs, monopolises culture and in the process hijacks cultural diversity. Fragmentation of the internet is an increasing problem which personalises and limits the information we receive. If AI models, can, as it is already universally accepted, be the source of disinformation and hate speech, what is there to stop them from entirely re-defining art and culture?

Creative industries now apply artificial intelligence in various forms throughout the entire value chain of producing, distributing and consuming creative content. Such a practice also gives rise to the issue of appropriation, an issue with both moral and economic dimensions when AI is applied to the creative economy. Firstly, it raises the question of whether building

on work from others is acceptable and secondly whether appropriate compensation is provided for the authors of the work that is used as a basis for appropriation.

On the developmental plain, there are significant asymmetries. Many artificial intelligence-related technologies come from developed countries, as does their regulation, thereby re-enforcing the digital divide. What is currently missing from global digital cooperation is sufficient inclusiveness and representation of the developing world, from the Global South as well as other developing countries. In those circumstances, there is a risk that contextual particularities, the need and concerns of developing countries will not be taken into account. That adversely affects their access and other benefits that derive from the use of AI in creative industries, interfering with their right to development and enjoyment of cultural rights.

On the broader question on how to protect human rights of individuals and peoples from the potential harm of AI, whilst ensuring equitable distribution of its benefits, regulation has been viewed by many as the ultimate answer.

The Council of Europe Framework Convention on Artificial Intelligence and human rights, democracy and the rule of law is the **first-ever international legally binding treaty** in this field. The Convention provides for a common approach to ensure that AI systems are compatible with human rights, democracy and the rule of law, while enabling innovation and trust. It provides a legal framework covering the entire lifecycle of AI systems. However, it is a brief document and only its preamble refers to cultural rights.

The AI Act is a European regulation on artificial intelligence (AI) – the first comprehensive regulation on AI by a major regulator anywhere. The Act assigns applications of AI to three risk categories. First, applications and systems that create an unacceptable risk. Second, high-risk applications, such as a CV-scanning tool that ranks job applicants, are subject to specific legal requirements. Lastly, applications not explicitly banned or listed as high-risk are largely left unregulated. The Act makes specific reference to creative content.

It is, however, hard to say at this stage how those instruments will protect cultural rights and the right to development and whether their scope will extend beyond their strictly territorial application. Furthermore, with a handful of exceptions, such as Brazil, China and India, who have engaged with AI regulations, the developing world remains largely regulation-free.

Against that backdrop, some of the questions that we are going to discuss are as follow:

1) What are the key benefits brought, and challenges posed by AI/Generative AI in the context of the creative ecosystems from the perspective of cultural rights and the right to development?

2) Does AI risk replacing artistic talent with technological talent?

3) What is the technological potential for AI to create monocultures that undermine cultural diversity and cultural rights?

4) What is the level of transparency required to strike the right balance between access and authorship/copyright rights?

5) What role does AI play in the creative economy?

6) Should we aim for binding regulations or simple guidance?

7) Do the current legal binding provisions provide effective protection to cultural rights?

8) How does enforcement work and can penalties deter misconduct effectively?

9) Should regulation be trusted to the AI firms or should their enforcement be state led?

10) Can we realistically create a sustainable AI safety regime across the regions?