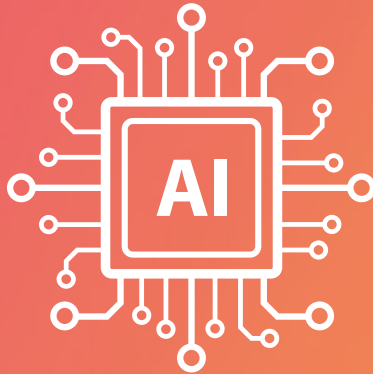


SACEM AND



The use of artificial intelligence tools in the creative sector raises many questions which relate both to the conditions in which protected works are used by these tools to generate content (outputs) and to the status of such content.

The purpose of this document is to provide answers in light of the provisions of the French Intellectual Property Code and Sacem's operating rules (Articles of Association, General Regulations, decisions of the Board of Directors)

Sacem will continue to monitor the technological and legal developments in this area, which may lead it to adjust its position if necessary. In fact, in 2021 Sacem set up a Strategy and Innovation Council to anticipate major technological developments and the strategic issues involved.

ARTIFICIAL INTELLIGENCE TOOLS

Artificial intelligence is a technology, using probability and statistics in particular, which imitates or simulates aspects of human intelligence, and concerns activities such as:

- learning (the ability to acquire and understand information),
- reasoning (the ability to use information to express conclusions and make decisions),
- the ability to understand and interact with the environment,
- and natural language (the ability to understand and generate human language).

This technology now makes it possible to generate textual, visual and audio content that resembles works traditionally protected by copyright. The functioning of artificial intelligence usually requires users to enter instructions in natural language (prompts) to enable them to propose results (outputs).

In the music sector, artificial intelligence tools can be used for technical functions (mixing, mastering, musical instruments), music recommendation algorithms and even musicological analysis, but they can now also be used for composition, performances, arrangement and recording.

“Artificial intelligence is a technology, using probability and statistics in particular, which imitates or simulates aspects of human intelligence”



THE USE OF PROTECTED WORKS BY ARTIFICIAL INTELLIGENCE TOOLS

The law⁽¹⁾ sets out that providers of generative artificial intelligence services may use protected works as part of their data mining operations, provided that they have accessed them lawfully and that the author has not exercised his or her right of opposition (opt-out).

By virtue of the rights at its disposal, Sacem exercised this right of opposition in October 2023 for its own repertoire, i.e. the works created by authors/composers who are its members. It is therefore not necessary for Sacem members to exercise this right of opposition insofar as Sacem has already exercised this opt-out on their behalf.

(1) Article L. 122-5-3. III of the French Intellectual Property Code

THE EFFECTS OF THE SACEM OPT-OUT

This opposition had the effect of restoring the authors' exclusive rights : data mining operations on the works of Sacem members are therefore subject to the prior authorisation of Sacem.

Artificial intelligence providers that use the works of Sacem members to carry out data mining activities, in particular to feed their training databases, must obtain the prior authorisation from Sacem and expressly negotiate the terms, particularly the financial terms, of this authorisation, in order to ensure that authors, composers and music publishers are fairly remunerated.

Sacem does not intend to oppose the development of artificial intelligence. Artificial intelligence offers tremendous opportunities to music creators, who are using it as a new tool for creativity. However, it is essential to establish a sustainable and virtuous balance between the rights of creators and music publishers and the development ambitions of artificial intelligence players. Such is the rationale for Sacem's opt-out.

More generally, Sacem supports the following principles:

1. respect of fundamental rights through artificial intelligence tools, including copyright, through diligent research and respect for the decision it expressed on behalf of the authors, composers and music publishers it represents;
2. effective and complete transparency vis-à-vis rights holders regarding the protected works and content used by artificial intelligence tools;
3. encouragement of suppliers of artificial intelligence tools to conclude licences within the framework of duly negotiated authorisations;
4. a fair and appropriate remuneration for the use of works protected by intellectual property;
5. effective sanctions in the event of non-compliance with these principles.



"Today, only content created by an individual is protected by copyright."

THE STATUS OF THE CONTENT GENERATED (OUTPUTS) BY THESE TOOLS

Today, only content created by an individual is protected by copyright. An artificial intelligence tool cannot be recognised, and therefore registered, as the author or co-author of a protected work.

As a result, content such as music, song lyrics or dubbing texts generated entirely by an artificial intelligence tool, without any creative input from an individual cannot be registered with Sacem.

Lyrics written by an individual on the other hand may be registered, even if the music was generated by an artificial intelligence tool and cannot be protected and therefore registered with Sacem.

Conversely, if the composer has retained control over his or her own artistic choices to create a musical composition, it can be registered with Sacem even if the lyrics associated with such composition were generated by an artificial intelligence tool. However, in this specific case, the lyrics cannot be registered with Sacem, as they are not considered to be a protected literary work.

THE NEED FOR A CREATIVE CONTRIBUTION FROM AN INDIVIDUAL

If an individual uses an artificial intelligence tool to generate content, copyright protection and the possibility of registering with Sacem depend on the nature of the individual's contribution.

The dividing line is between content generated by artificial intelligence without any creative input from an individual, which cannot be protected by copyright, and content that results from the creative input of individuals who have used one or more artificial intelligence tools in the course of their creative activity - in such case, such content constitutes a work protected by the French Intellectual Property Code.

There is no text or court decision defining the qualitative or quantitative threshold for qualifying a creative contribution. This is assessed on a case-by-case basis.

Thus, the accessory role of an artificial intelligence tool in the creation of a work allows the conclusion to be drawn that such a creative contribution exists. On the other hand, a simple prompt, or repeated prompts, devoid of originality, exclude such a creative contribution and, in this case, no registration can be made with Sacem.



“Registrants should bear in mind that an artificial intelligence tool cannot be recognized as an author”

THE REGISTRANT'S RESPONSIBILITY FOR REGISTRATIONS MADE WITH SACEM

When making their registrations, registrants should bear in mind that an artificial intelligence tool cannot be recognized as an author and that content generated by such a tool cannot be protected under copyright law without any creative contribution on their part.

If there is any doubt about a registration, particularly with regard to a registrant's creative contribution, whether due to the use of an artificial intelligence tool or of a third party's pre-existing work, Sacem may request that any additional information be provided to justify the validity of the registration (Article 45 of the General Regulations).

But above all, it is essential to remember that registrations with Sacem are made, under the terms of Article 38 of its General Regulations, under the sole responsibility of the registrant(s).

This article stipulates that Sacem “cannot, under any circumstances, be held responsible for the statements made in the registrations (...) the registrant being the sole guarantor vis-à-vis the society and third parties of the originality of the registered work and of the rights over it”.

Responsibility for the accuracy of the registration therefore rests solely with the registrant, who may, in the event of inaccuracy, be sanctioned by Sacem under its Articles of Association and General Regulations and be held liable by a third party in the event, for example, of unauthorised use of a pre-existing work.

CAUTIONARY MEASURES WHEN USING ARTIFICIAL INTELLIGENCE TOOLS

Users of artificial intelligence tools should read the terms of use of such tools carefully. These may limit the possibilities of use of the content thus generated, or allow the tools to use the data, such as lyrics or musical compositions, supplied by an individual in his or her prompts or even to claim ownership of the outputs generated through these prompts.

In this respect, it is important to remember that rights are entrusted to Sacem on an exclusive basis, which means that a third party, such as e.g. a provider of an artificial intelligence tool, cannot claim any ownership right over the rights relating to works that have been entrusted to Sacem by one of its members.

The exclusive nature of this entrustment prevents providers of artificial intelligence tools from claiming ownership, by virtue of their terms of use, over the intellectual property of pre-existing works used in prompts, where these works belong to Sacem's repertoire.

"A provider of an artificial intelligence tool, cannot claim any ownership right over the rights relating to works that have been entrusted to Sacem by one of its members."

FREQUENTLY ASKED QUESTIONS

These frequently asked questions are intended to recall the principles set out above, in a more educational form, and to supplement them with a practical illustration.

What is a generative artificial intelligence tool?

A generative artificial intelligence tool is, under the terms of the European Regulation of 13 June 2024 on Artificial Intelligence, a tool that is trained using a large amount of data, including protected works, and that is capable of autonomously performing a wide range of distinct tasks such as creating new content, which may for example be text, images, sound or video.

Can artificial intelligence tools use my works without my permission?

The law provides that providers of generative artificial intelligence services may use protected works as part of their data mining operations, provided that they have accessed them lawfully and that the author has not exercised his or her right of opposition (opt-out).

By virtue of the rights at its disposal, Sacem has exercised this right of opposition for its own repertoire, i.e. works created by authors/composers who are its members.

This opposition had the effect of restoring the authors' exclusive rights : data mining operations on the works of Sacem members are therefore subject to the prior authorisation of Sacem.

Entities that use the works of Sacem members to carry out data mining activities, in particular to feed their training databases, must obtain prior authorisation from Sacem and expressly negotiate the terms of this authorisation, in order to ensure that authors, composers and music publishers are fairly remunerated.

Is it up to me or to Sacem to authorise the use of my works by an artificial intelligence tool?

The entrustment of rights to Sacem is made by its members on an exclusive basis, so that only Sacem can authorise their use, particularly by artificial intelligence tools; and not its members.



What is Sacem's position on artificial intelligence tools?

Sacem is convinced of the opportunities afforded to music creators by artificial intelligence tools, which are being used as a new tool at the service of creation.

However, it also considers it essential that creators and publishers whose works are used in artificial intelligence tools should be involved in the development and use of these tools, in particular by defining the conditions for use of their works in this context.

This is the rationale behind the Sacem opt-out.

More generally, Sacem supports the following principles:

1. respect of fundamental rights through artificial intelligence tools, including copyright, through diligent research and respect for the wish it expressed on behalf of the authors, composers and music publishers it represents;
2. effective and complete transparency vis-à-vis rights holders regarding the protected works and content used by artificial intelligence tools;
3. encouragement of suppliers of artificial intelligence tools to conclude licences within the framework of duly negotiated authorisations;
4. a fair and appropriate remuneration for the use of works protected by intellectual property;
5. effective sanctions in the event of non-compliance with these principles.

Can a content created using an artificial intelligence tool be protected? Can I register it with Sacem?

Copyright only protects works created by individuals (human creations). An artificial intelligence tool can never be considered an author.

If a content is generated entirely by an artificial intelligence tool, it is not protected by copyright and cannot be registered with Sacem.

If the content has been created with the help only of an artificial intelligence tool and there is a human creative contribution, it is protected by copyright and can therefore be registered with Sacem, provided that it falls within its repertoire.

Sacem's repertoire is made up of the works, directly entrusted to it by its members, i.e. musical works with or without words of French or foreign origin, as well as:

- Documentary works dealing with an exclusively musical subject;
- Poems and sketches ;
- Excerpts from dramatic and dramatico-musical works lasting less than 20 minutes for television;
- Dubbing and subtitling of fiction;
- Directing of audiovisual works applying to works in Sacem's repertoire, in particular music videos and stand-up videos;
- Audiovisual or radio works of a humorous or entertainment nature, i.e. audiovisual or radio works incorporating sketches or humorous sequences (parodies, imitations, hidden cameras, etc.) created especially for a television or radio programme.

If I write the lyrics to a song but use an artificial intelligence tool for the music, what is protected by copyright and what do I have to register with Sacem ?

As the lyrics were written by an individual, they are protected by copyright and can be registered with Sacem.

On the other hand, the music generated entirely by an artificial intelligence tool is not protected by copyright and cannot be registered with Sacem.

If I compose music but use an artificial intelligence tool for the lyrics, what is protected by copyright and what do I have to register with Sacem?

As the music was composed by an individual, it is protected by copyright and can be registered with Sacem.

However, the lyrics generated entirely by an artificial intelligence tool are not protected by copyright and cannot be registered with Sacem under the name of an author.

When is there a creative contribution that makes it possible to consider that the work was created by an individual and not generated by an artificial intelligence tool?

There is no text or court decision defining the threshold for qualifying a creative contribution. This is assessed on a case-by-case basis. But changing a few words in a lyric or a few notes in a composition, for example, does not constitute a creative contribution.

However, the use of an artificial intelligence tool is not incompatible with the qualification of a work protected by copyright, but this qualification as a protected work, nevertheless, presupposes a genuine creative contribution by an individual.

What does Sacem do if a work is registered as having an individual as an author where in fact it has been generated by an artificial intelligence tool?

Registration of works with Sacem are made under the sole responsibility of the registrant. Article 38 of Sacem's General Regulations stipulates that Sacem *"cannot, under any circumstances, be held responsible for statements made in registrations (...) The registrant being the sole guarantor to the society and to third parties of the originality of the registered work and of the rights over it"*.

If there is any doubt about a registration, particularly with regard to a registrant's creative contribution, whether due to the use of an artificial intelligence tool or for any other reason (such as use of a third party's pre-existing work), Sacem may request that any additional information be provided to justify the validity of the registration (Article 45 of the General Regulations).

An author who registers a work of which he or she is not the creator risks a disciplinary action by Sacem under its Articles of Association and General Regulations, irrespective of any liability action brought by a third party in the event, for example, of unauthorised use of a pre-existing work.

Apart from possible sanctions by Sacem, what do you risk if you register content generated by an intelligence tool as a human creation?

The answer to this question depends on the terms of use of artificial intelligence tools, which should be read carefully. These may in fact limit the possibilities of use of the content generated in this way, and may not grant rights over it to users of artificial intelligence tools. In the event of such limitations, the providers of these tools could bring a liability action against anyone wrongfully using and/or claiming ownership over the content generated in this way.

Is it safe to put lyrics you've written or music you've composed into a prompt?

This depends on the terms of use of artificial intelligence tools.

Under these, tools can sometimes claim ownership of the lyrics or music included in a prompt sent to an artificial intelligence tool.

However, by becoming a member of Sacem, you have entrusted Sacem with your exclusive rights to communicate your works to the public and to reproduce them mechanically. You cannot, therefore, transfer these rights to anyone else, including an artificial intelligence tool

Consequently, the terms of use of an artificial intelligence tool that provide for the transfer to it of the right of communication to the public and the mechanical reproduction right would be unenforceable against Sacem in respect of the works of its members, even if those works are included in a prompt sent to the tool by one of its users.



YOU HAVE ANY QUESTIONS?

Email us:

My member account > Contact > My message

