



30.11.2023

EGDF POSITION ON AI AND COPYRIGHT

About EGDF

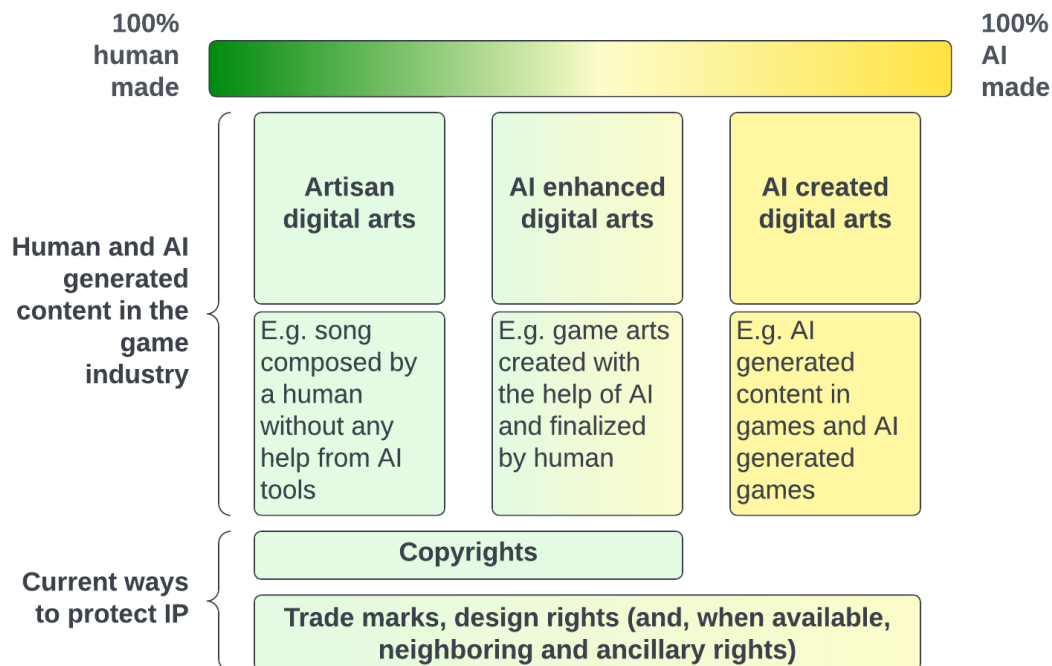
1. **The European Games Developer Federation e.f. (EGDF)¹** unites 23 national trade associations representing game developer studios based in 22 European countries: Austria (PGDA), Belgium (FLEGA), Croatia (CGDA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Lithuania (LZKA) Netherlands (DGA), Norway (Virke Produsentforeningen), Poland (PGA and IGFP), Portugal (APVP), Romania (RGDA), Serbia (SGA), Slovakia (SGDA), Spain (DEV), Sweden (Spelplan-ASGD), Switzerland (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Through its members, EGDF represents more than 2 500 game developer studios, most SMEs, employing more than 45 000 people.
2. **The games industry** represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. In 2021, there were around 5 500 game developer studios and publishers in the EU, employing over 85 000 people and running a combined turnover of over €18,3bn². In 2022, Europe's video games market was worth €24,5bn, and the industry registered a growth rate of 5% in key European markets³. The European digital single market is the third-largest video game market globally.
3. **The European games industry is the digital forerunner** of cultural and creative industries. It paves the way for the exploitation of new technological innovation and the adaptation of new business models and pushes the boundaries of digital games as an artistic audiovisual medium. Its success is based on keeping ideas and concepts free for everyone to experiment and innovate and ensuring clear and predictable ways to enforce IP rights. For decades, the games industry has been using and experimenting with machine learning-based procedural content creation, AI-generated content, crowd-sourced user-generated fan content, and collectively created open-source code. The new generative AI tools are, therefore, nothing new. Still, although humans will make key artistic decisions for years to come, the EU must build a vision for the new Era of creative content where the majority of the creative content by volume will not be human-made.
4. **The success of the games industry is not just based on the rapid uptake of new AI tools.** Unlike many other cultural and creative industries, the games industry builds its own AI tools and works closely with several third-party AI tool developers. Generative AI tools are just one of the many AI tools used in game production and marketing.

¹ For more information, please visit www.egdf.eu

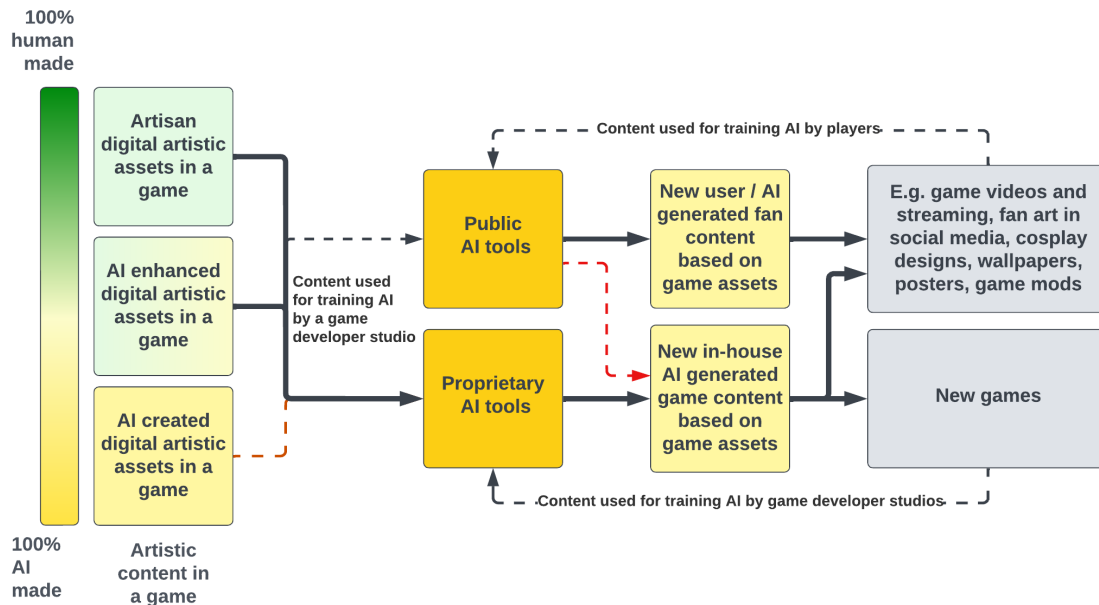
² EGDF-ISFE 2021 European games industry insights report
<https://www.egdf.eu/wp-content/uploads/2023/07/V9-VGE-EGDF-video-game-industry-report2021.pdf>

³ ISFE-EGDF 2022 Key Facts
<https://www.videogameseurope.eu/news/europes-video-games-industry-publishes-2022-annual-key-facts-report-all-about-video-games/>

1. IP in a new AI-driven copyright era



- A new AI-driven era for copyright protection does not mean the end of copyright. It just means that the majority of the content available for humans is not copyright protected.** Until now, content without a clear author, like open-source code, collective user-generated content or AI-generated content, were the niches in the margins, while copyright-protected content, either 100% human-made or human-made content powered by AI tools, dominated our digital space. Now, the roles are beginning to change, and human-created copyright-protected content will slowly start to lose its dominant role. In this new reality, trademarks and design rights will play a more and more crucial role in protecting and controlling the game IPs.
- A new AI-driven era for copyright protection means new regulatory uncertainty hindering the use of new AI tools.** Under copyright law, video games are complex works composed of multiple copyrighted works. Due to regulatory uncertainty, many game developer studios are taking strict measures to minimise the risks related to the use of AI tools. Many studios have strict internal policies limiting the use of public AI tools only for creating, for example, mock-ups or concepts and ensuring that human creators always create the final in-game content. At the same time, many developers ensure that their proprietary generative AI tools are trained only on their own in-house content so that the content created with those tools is as far as possible under the studio's own control. At the same time, the regulatory uncertainty is pushing game developers and publishers to identify the key creative artistic elements of their IP in a game and use even more resources to protect and control them through different means, from copyrights and trademarks to neighbouring and ancillary rights (when available), design rights, internal policies and fan content policies.



7. **A new AI-driven era for copyright protection means a new approach to IP.** Step by step, game developer studios are moving their focus from the protection of IP to the control of IP. In the old world, game developers focused on fighting IP infringement and piracy. Then, new business models (e.g. free-to-play) and technological innovations (e.g. games that are always connected to servers) solved most of the old problems. In the new reality, the focus of game developer studios is on finding the optimal balance between enabling collective efforts of their fan communities to promote their games with their own, sometimes AI-generated, fan content and maximising the control of their IP.
8. **One promising way to exploit IP is to move the focus from IP protection to the enforcement of IP and control of IP use through the general fan content policies.** Currently, existing IP infringement tools are too blunt for the complex and nuanced digital reality we live in. Instead of focusing on how to take down all infringing content, the game industry has moved its focus to how to build a somewhat controlled environment for enabling (sometimes AI-based) fan content that can be taken down when needed. For this reason, game developer studios have created extensive fan content policies and game streaming licenses ([see, for example, GAME directory](#)) that allow the use of their games and game assets for, for example, online streaming, fan art, cosplay designs, personal wallpapers and posters and even game mods. At the same time, game developers are using those policies to ensure that their IP content is not used, for example, for commercial purposes or for creating racist, xenophobic, sexist, defamatory, illegal or in any other way offensive content.
9. **The best way to protect IP and trade secrets while using AI tools is not through regulation but through proprietary AI tools.** Only giant game industry conglomerates have the resources to build their proprietary AI tools for generative content creation entirely in-house. Especially SME game developer studios rely on third-party AI tools tailored for their internal use through technological (e.g. run on internal servers) and contractual (e.g. data is not used for further training of AI models) safeguards. The more complete control of proprietary AI solutions the companies have, the more minimal the risks for IP infringements or trade secrets being leaked out. Consequently, many game developer studios have built internal policies and guidelines on what kind of work can be uploaded to publicly available AI tools (and thus used for their training) and what type of work can only be uploaded to proprietary tools to ensure, for example, the protection of their trade secrets.

2. The Commission should widen its focus from protecting human-created content from AI to building a competitive legal framework enabling the controlled use of protected IPs for training AI.

10. In order to build a solid future-proof framework for copyright in the new AI-driven era, the Commission must focus on the following priorities.
11. **The EU needs a legal framework that keeps human-created copyright-protected content competitive.** The complex territorial copyright framework for human-created music is one of the key drivers behind the rapid development of AI-generated music. It is thus crucial to ensure that the use of human-created artistic content is as easy and smooth as the use of AI-generated content. Thus, the EU regulatory framework should both secure fair compensation for the rightholders and, at the same time, ensure that the use of human-created copyright-protected content does not become so complex, burdensome and risky that its markets will be minimal.
12. **The EU must carefully balance the protection of artistic authors against their contractual freedom and freedom to conduct business.** Unlike in many other cultural and creative industries, in the game industry, artists are often directly employed by the game developer studios and publishers. They receive a competitive monthly salary and often have access to annual success bonuses or stock options. The EU must respect the rights of these leading digital artistic auteurs to contractually allow the use of their artistic content for AI training in the terms they find best fit for them. Similarly, those artistic creators who prefer to operate outside collective rights management systems and license their AI-enhanced content directly to global markets through game assets stores should be allowed to do so.
13. **The EU must widen its focus from the use of copyright-protected works in AI training to the protection of trademarks and design rights in a digital environment.** Understandably, the current focus of the European debate on AI is on copyrights. However, the EU must widen its focus on creating a clear framework for trademark-protected content and content protected by design rights for training AI, as they will be far more critical for the protection and control of IP in the new AI-driven era.
14. **The EU must carefully balance the protection of the trade mark and design rights holders against their freedom to conduct business.** IP owner should always have exclusive control over their IP. The commission should not push forward any forced collective licensing system for AI tools, as it would significantly hinder those who prefer their IPs to be available on AI tools as efficiently as possible. For those who do not want their IPs to be used for training AI, the current opt-out mechanisms are enough.
15. **The commission needs to create a specific legal framework for unfair, non-negotiable standard contracts used by AI tool developers.** Currently, AI tools rarely include any privacy or confidentiality agreements in their standard contract terms. Even more importantly, the differences between the non-negotiable contract terms, for example, popular generative AI tool developers are forcing on their users, are enormous. Europe needs a copyright framework that protects creators from unfair forced licensing through standard, non-negotiable contract terms.
 - a. On the other end of the spectrum, we have [Open AI](#): **“Our Use of Content.** *We may use Content to provide, maintain, develop, and improve our Services, comply with applicable law, enforce our terms and policies, and keep our Services safe.* **Opt Out.** *If you do not want us to use your Content to train our models, you can opt out by following the instructions in [this Help Center article](#). Please note that in some cases this may limit the ability of our Services to better address your specific use case.”*

- b. On the other end of the spectrum, we have [Midjourney](#): *“By using the Services, You grant to Midjourney, its successors, and assigns a perpetual, worldwide, non-exclusive, sublicensable no-charge, royalty-free, irrevocable copyright license to reproduce, prepare Derivative Works of, publicly display, publicly perform, sublicense, and distribute text, and image prompts You input into the Services, or Assets produced by the service at Your direction. This license survives termination of this Agreement by any party, for any reason.”*

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