

# **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

### **Concept Note**

**Presented by Klentiana Mahmutaj**

#### **Introduction**

Artificial Intelligence (AI) is here to stay. It has the potential to transform society radically, from improving education and healthcare to revolutionising, amongst others, science, government services and cultural and creative landscape. It can change permanently human creativity, its development, delivery and future. In doing so, it can directly affect the right to enjoy culture, freedom of cultural creativity, in the context of the right to development.

AI's capacity for positive impact is enormous. Its ability to expand and become increasingly sophisticated is apparent as is the potential for abuse, exploitation and harm, deliberate or otherwise, to human rights.

Creative industries, for example, apply artificial intelligence in various forms throughout the entire value chain of producing, distributing and consuming creative content. Whether human artistic talent is being replaced by technological talent is an unavoidable question, as is the revolutionary impact on artistic human development, perhaps by transforming it from inception.

Moreover, appropriation is an issue with both moral and economic dimensions when artificial intelligence is applied to the creative economy: whether building on work from others is acceptable and 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, re-enforcing the digital divide. There is real risk of leaving behind developing countries on access and other benefits that derive from the use of AI in creative industries, therefore directly impacting on the right to development.

In those circumstances, we must consider whether and how regulation can protect human rights of individuals and peoples from the potential harm of AI, whilst ensuring equitable distribution of its benefits.

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. Its preamble makes reference 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.

## **Purpose**

The discussion aims to explore the implications of AI, including Generative AI, on cultural rights and the right to development, particularly in the context of the creative ecosystems. It will assess the opportunities and the challenges presented by AI and the effect of existing guidance and regulatory frameworks in protecting cultural rights and ensuring fair distribution of benefits resulting from AI.

## **Guiding questions**

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. How does AI impact cultural diversity? Is there a risk of AI creating monocultures that undermine cultural rights?
4. What role does AI play in the creative economy?
5. Should we aim for binding regulations or simple guidance?
6. What is the current international regulatory framework dealing with AI?
7. What concrete impact, if any, will the Coe Framework Convention on AI have on the protection of cultural rights?
8. What concrete impact, if any, will the EU AI have on the protection of cultural rights?
9. Do the current legal binding provisions provide effective protection to cultural rights?
10. How does enforcement work and whether penalties could truly deter misconduct?
11. What is the level of transparency required to strike the right balance between access and authorship/copyright rights?
12. Should regulation be trusted to the AI firms, or should they be enforced from above?

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