



# **COPYRIGHT PROTECTION AND ARTIFICIAL INTELLIGENCE**

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# What the Dreamwriter Team Actually Does

Technical Task	Plain English Explanation
<b>Data format handling</b>	Building a system that can "read" webpages, PDFs, and documents, then storing them in a searchable library
<b>Creating trigger conditions</b>	Setting up rules that tell the AI when to generate content and which "voice" to use
<b>Setting the text corpus</b>	Uploading and organizing your company's actual documents so the AI has real source material
<b>Training the proofreading algorithm</b>	Building an automated editor that checks if the AI's output matches your brand's actual messaging

# The Legal Question: Could an article written entirely by an AI system be protected by copyright?

**The Court's Ruling (A Landmark Decision): YES, it was protected.** But the reasoning is crucial for you to understand:

The court **did NOT** say the AI was the author.

Instead, it ruled that the **human team** behind the AI made critical creative choices:

- **Selecting** the data and parameters for the AI.
- **Setting** the article's style, tone, and structure.
- **Arranging** and **judging** the final output.

Therefore, the article was a "**legal person's work**" (Tencent's), reflecting human intellectual achievement.

## **The Counter-Case: When Protection is Denied**

**Case Study: *Thaler v. Perlmutter (U.S. Copyright Office), United States, 2023***

### **The Facts:**

- Dr. Stephen Thaler attempted to register a copyright for an artwork ("A Recent Entrance to Paradise") created by his AI system, "Creativity Machine."
- He listed the AI as the creator and sought to have the copyright transfer to himself as the owner.

### **The Legal Question:**

Can a work created autonomously by an AI, with no human intervention, be copyrighted?

# CHINA'S JUDICIAL JOURNEY: FROM REJECTION TO PROTECTION

- **The Restrictive Starting Point (2018)**
- **Case: *Beijing Film Law Firm v. Baidu* (2018)**
- **Facts:** An AI system generated an analytical article. The creator sued for infringement when it was copied.
- **Court's Holding: NO COPYRIGHT PROTECTION.**
- **Reasoning:** The court acknowledged the article was "original" in a factual sense. **However**, it firmly stated that copyright requires a work to be created by a "**natural person.**" Since no human author could be identified for the specific expression, protection was denied.
- **The Message (at the time):** Pure AI output, without a human author, falls outside the law. This mirrored the strict Western approach.



# THE ARCHITECTURE OF EU COPYRIGHT LAW

The EU does not have a single "EU Copyright Act." Instead, copyright is governed by a **harmonized framework** of directives and case law, built upon a core, non-negotiable principle.

# The Legal Foundation: The *Acquis Communautaire*

This is the body of EU law that member states must follow. Key directives include:

- **InfoSoc Directive (2001/29/EC):** The cornerstone. Harmonizes core rights (reproduction, distribution, communication to the public) and exceptions.
- **Term Directive (2006/116/EC):** Sets the duration of copyright (life of author + 70 years).
- **Software Directive (2009/24/EC):** Protects computer programs as literary works.
- **Database Directive (96/9/EC):** Protects databases through copyright (*sui generis* right).
- **DSM Directive (2019/790):** The most recent update, addressing the digital single market, including **Text and Data Mining (TDM) exceptions** (Articles 3 & 4).

# The Supreme Interpreter: The Court of Justice of the EU (CJEU)

Because directives are often broad, the **CJEU is the ultimate authority** in interpreting EU copyright law.

Its rulings are **binding on all national courts** in the EU, creating a **harmonized standard**.

Through its case law, the CJEU has **constructed the EU's definition of a protectable "work."**

# Article 4 of the Digital Single Market Directive (EU) 2019/790

**"Exception or limitation for text and data mining"**

This provision creates a mandatory exception allowing reproductions and extractions of lawfully accessible works for text and data mining (TDM) for **any purpose** (including commercial), subject to a rights holder opt-out mechanism

# Two Competing Approaches to the "Opt-Out" Requirement

## THE STRICT APPROACH

- Netherlands (DPG Media ruling); Preferred by many EU copyright scholars
- *"Only machines can communicate with machines effectively"*
- AI scrapers operate automatically. A human-readable sentence cannot be detected or respected by automated systems. Requiring machine-readability ensures **legal certainty and technical enforceability**.

## THE EXPANSIVE APPROACH

- Germany (§ 44b UrhG); Supported by Hamburg Regional Court (*Kneschke v. LAION*, 2)
- *"Humans running AI are responsible for reading legal notices"*
- Article 4(3) says "such as" machine-readable means – this is **illustrative, not exhaustive**. Any method that clearly communicates the rights holder's intent is valid. The AI operator's **human controller** must exercise diligence.