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Verifying Human Works

A Comparative Analysis of the Right of Attribution in relation to AI Generated Media

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Summary

With the rise of AI generated media, a shift in the audience perception of AI generated content has taken place, where studies show that content which is labelled as AI will be less interacted with compared to human labelled content. The thesis therefore examines possible methods for verifying human made content, in particular, whether copyright's right of attribution can act as a verifier for human works within the EU.

The initial chapter examines prevailing regulation regarding AI generated content in view of distinguishment, where the AI Act has been examined. It concludes that there are obligations on providers and deployers for labelling AI generated content. The limitations for deployers to only mark deepfakes and in a way it does not impede their artistic freedom is emphasized as the greatest implication for the audience to distinguish between human made works and AI generated media.

Since the labelling obligations under the AI Act are not absolute, the thesis examines the moral right of attribution, under the Berne Convention and within the EU. The right of attribution, as well as other moral rights, are not harmonised within the EU, where the main reasoning has been due to a lack of effect on the internal market. The opposite is however concluded in view of the circulation of works on the internet as well as that some harmonisation has been done through legislation and the CJEU's jurisprudence. It is further concluded that in order to attain a smooth functioning of the internal market as well as upholding the interest of authors, a harmonisation of the right of attribution is necessary.

In what way the EU is to construe the right of attribution in relation to human verification, Sweden and France's right of attribution are examined. Where the findings are that the right is similar in some aspects, as in its personal nature. However the right has a stronger standing in France due to its perpetuity and more extensive applicability compared to Swedish law. The similarities and differences in the two legal systems are analysed regarding human verification, where the French system seems to be more favourable in the majority of cases.

The thesis concludes that the obligations under the AI Act is not a complete measure in order for the audience to distinguish AI generated media, where the alternative is the right of attribution. The EU can legislate that AI markings are not be confused with authors' attributive marks as well as a copyright symbol similar to the Commissions proposed for AI generated media. Questions about registrations of copyright is however scrutinized in view of author's right to remain anonymous.

Sammanfattning

I takt med utvecklingen av AI-genererad media, har allmänhetens uppfattning om sådant innehåll förändrats. Studier visar att innehåll som märks som AI-genererat interageras mindre med jämfört med innehåll märkta som mänskligt skapat. Mot denna bakgrund undersöker uppsatsen eventuella metoder för att verifiera att innehåll är skapat av en människa, i synnerhet ifall rätten till namngivelse kan fungera som ett EU-rättsligt verifieringsverktyg för mänskliga verk.

Det inledande kapitlet granskar AI-förordningens krav på att AI-genererat ska märkas samt AI-genererad medias effekter på dels användare dels den kreativa industrin i stort. AI-förordningen föreskriver skyldigheter gentemot leverantörer av AI-system samt tillhandahållare som genererar sådant innehåll. Begränsningen för tillhandahållare att endast märka deepfakes och på ett sätt som inte hindrar deras konstnärliga frihet betonas som den största konsekvensen för användare att skilja mellan mänskliga verk och AI-genererade medier.

Mot bakgrund av att märkningsskyldigheterna enligt AI-förordningen inte är absoluta, undersöker avhandlingen den ideella rätten enligt Bernkonventionen samt inom EU. Upphovsrättens ideella rättigheter är inte harmoniserade inom EU, varav det konstateras i detta arbete att upphovsmän befinner sig i ovisshet gällande deras rättigheter när verk sprids på nätet. Viss harmonisering har även motsatsvis skett genom lagstiftning samt EU-domstolens rättspraxis. Harmonisering av namngivelsesätten konstateras även som nödvändig för att uppnå en väl fungerande inre marknad samt för att tillgodose upphovsmännens intressen.

Namngivelsesättens tillämpningsområde inom Svensk och Fransk rätt granskas med anledning av att utröna under vilka förutsättningar EU kan applicera rättigheten i förhållande till mänsklig verifiering. Undersökningen visar att rättigheten är likartad i vissa avseenden, såsom dess personliga karaktär. Namngivelsesätten har däremot en starkare ställning i Frankrike på grund av dess eviga karaktär och tillämpningsområde jämfört med svensk rätt. Likheterna och skillnaderna mellan de två rättssystemen analyseras avseende mänsklig verifiering, där det franska systemet verkar vara mer fördelaktigt.

Uppsatsen konstaterar avslutningsvis att skyldigheterna stipulerade i AI-förordningen är ofullständiga avseende möjligheterna att särskilja AI-genererad media, varav namngivelsesätten kan utgöra ett alternativ. Det föreslås att AI-märkningar ska innehålla bestämmelser om att märkningen inte får förväxlas med upphovsmäns attributmärken samt att en upphovsrättssymbol liknande den som kommissionen föreslagit för AI-

genererade medier ska gälla inom EU. Frågor om registrering av upphovsrätt ifrågasätts dock med hänsyn till upphovsmannens rätt att förbli anonym.

Preface

Jag vill börja med att rikta ett stort tack till min handledare Aurelija Lukoševičienė. Dina insikter och råd har varit till stor nytta, vilket har ytterligare inspirerat mig i uppsatsskrivandet.

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Abbreviations

AI	Artificial intelligence
AI Act	REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979) TRT/BERNE/00
CJEU	Court of Justice of the European Union
CDSM	DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC
Enforcement Directive	DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the enforcement of intellectual property
French Intellectual Property Code	Code de la propriété intellectuelle (consolidated version as of March 13, 2025)
JCP	Juris-classeur – La semaine juridique
InfoSoc Directive	DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001 on the harmonisation of certain aspects of copyright and

Orphan Works Directive	related rights in the information society Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works Text with EEA relevance
Term Directive	DIRECTIVE 2006/116/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on the term of protection of copyright and certain related rights
TFEU	Treaty on the Functioning of the European Union
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights (as amended on 23 January 2017)
Swedish Copyright Act	Act (1960:729) on Copyright in Literary and Artistic Works (as amended up to Act (2018:1099)

1 Introduction

1.1 Background

Digitization has rapidly evolved the last few years, and one consequence has been generative artificial intelligence (AI). What was initially praised for making businesses more time and cost effective, has also had its impacts on the creation and circulation of digital art. Digital art is however not a novelty in the 21st century, nor has it been perceived problematic. In the early days of generative AI, a large infatuation was prevalent. For instance, an AI generated portrait called *Portrait of Edmond de Belamy*, was sold at auction for \$ 432,500.¹ Alongside the developments of AI, a novel term has emerged, depicting that the initial optimism seems to have faded: ‘AI-slop’. It is defined by the Cambridge Dictionary as “content on the internet that is of very low quality, especially when it is created by artificial intelligence”.² Arguments like that the digital landscape is swiftly changing and that content created by humans is now a rarity are being emphasized. More and more AI-slop is taking over and platforms, like Facebook, are not only creating their own slop, but also boosting their algorithms with AI generated media.³

In some instances, AI-slop is merely deemed harmless and used for a comedic effect. However, the general public’s opinions seems to be clear, where they are seeking and preferring human made content over AI generated. For example, there are services⁴ available aiming at guaranteeing that art is made by humans and not an AI. Studies also show that art labelled as “human-made”, compared to “AI-created” are preferred by the audience⁵. In some instances, it is clear when media is AI generated and the audience does not question its creator. However, the previously known ‘AI-human’ with its missing arms and legs is now a rarity, making it more difficult in ascertaining whether media is created by a human or an AI.

With the recently enacted AI Act, there are obligations to label AI generated media as such, but there are no harmonised measures for when and how media

¹ Eileen Kinsella, ‘The First AI-Generated Portrait Ever Sold at Auction Shatters Expectations, Fetching \$432,500—43 Times Its Estimate’ *Artnet News* (25 October 2018) <<https://news.artnet.com/market/first-ever-artificial-intelligence-portrait-painting-sells-at-christies-1379902>> accessed 30 January 2026.

² Cambridge university press & assessment, ‘Meaning of slop in English’ (*Cambridge Dictionary*) <<https://dictionary.cambridge.org/dictionary/english/slop>> accessed 30 January 2026.

³ Arwa Mahdawi, ‘AI-generated ‘slop’ is slowly killing the internet, so why is nobody trying to stop it?’ *The Guardian* (8 January 2025) <<https://www.theguardian.com/global/commentisfree/2025/jan/08/ai-generated-slop-slowly-killing-internet-nobody-trying-to-stop-it>> accessed 30 January 2026.

⁴ See eg <<https://humanmade.art/>>.

⁵ Lucas Bellaiche and others ‘Humans versus AI: whether and why we prefer human-created compared to AI-created artwork’ [2023] 8(42) *Cognitive Research: Principles and Implications* <<https://doi.org/10.1186/s41235-023-00499-6>>.

is to be labelled as “human created”. Traditionally, authors of works have enjoyed protection by copyright, where their rights are commonly divided into two categories; economic and moral rights. The economic rights are mostly harmonised within the EU, whereas the moral rights are not. The moral rights are commonly divided into two rights – the right of attribution and the right of integrity, which in essence means that the author has a right to be attributed to their work and the right to object to any derogatory changes of their work. A work is however only afforded copyright protection when it is original, in the sense that, it reflects the author's personality and expresses their free and creative choices in the production of the work.⁶ Where the work has been constrained by technical requirements, limiting the author’s creative freedom, the work does not meet the originality requirement.⁷ The anchoring of copyright in human creativity has been argued to safeguard the moral and cultural values rooted in European legal traditions, where the requirement of ‘free and creative choices’ are seen as a result of consciousness. It has therefore been deemed unlikely that purely AI generated outputs with no or very little human intervention could lead to copyright protection, let alone AI tools themselves possessing copyright over any works.⁸

It has been affirmed that where works have gone from the physical to the digital, such as performances being recorded, later turned into music albums which in turn are uploaded as internet-based music files, a distance occurs from the human being behind the works creation. Every new exposure makes it more difficult for the receiver of the work to recognize it as a human creation.⁹ In a digital landscape where the audience is becoming more uncertain whether content is authentic or even created by a human, one can question whether the right of attribution can function as verification tool for works that are human creations?

1.2 Purpose and Research Question

In light of that the public is arguing that human works are becoming a rarity while simultaneously is uncertain what is AI generated and what is not, the purpose is to review the moral right of attribution in relation to human verification. Additionally, the thesis scrutinizes the EU’s stance on the moral rights of copyright and how the right of attribution can be applied in verifying human works in an EU context.

⁶ Case C-145/10 *Eva-Maria Painer v Standard VerlagsGmbH and Others* [2011] EU:C:2011:798, 94.

⁷ Case C-683/17 *Cofemel - Sociedade de Vestuário SA v G-Star Raw CV* [2019] EU:C:2019:721, 31.

⁸ Sofia Karttunen, ‘Copyright of AI-generated works: Approaches in the EU and beyond’ [2025] *European Parliamentary Research Service* PE 782.585, 2.

⁹ Mira T. Sundara Rajan, *Moral Rights: Principles, Practice and New Technology* (online edn, Oxford University Press, 2011), <<https://doi.org/10.1093/acprof:osobl/9780195390315.001.0001>> accessed 5 March 2026, 3.

The research question is therefore “to what extent can the moral right of attribution function as a verification tool for human works in EU’s digital landscape?” In order to examine the research question, the following relevant questions are analysed:

- What are the adversarial impacts of AI generated content and what is currently regulated under EU law regarding verification?
- What is the right of attribution’s current position within the EU?
- What is the material scope of the right of attribution under Swedish and French law?
- What are the elements of the right of attribution which can be used by the EU for verification?

1.3 Method and Materials

1.3.1 Methodology

In observance of the thesis’ purpose, research question and the relevant questions, the chosen methodology is the legal dogmatic method, in that the research question is examined in view of the pertaining theories of sources of law within a certain legal order with the aim of determining how a specific legal rule is to be understood in a specific context.¹⁰ In essence, the thesis examines the material scope of the moral right of attribution in view of EU, Swedish and French law and conceptualises the right of attribution to what extent it can act as a verifier for human works in relation to AI generated works. The analysis therefore takes on an interpretative approach of the findings in regard to AI markings, moral rights within the EU, the material scope of the right of attribution under Swedish and French law as well as the relevant elements of the right of attribution in view of verification. The interpretative perspective is argued to be effective when utilising the legal dogmatic method since legal language is vague, where it is on the other hand part of a practice which aims at seeking clarity. The interpretive approach aids at filling those gaps of uncertainty in order to determine the meaning of the law in question. Arguments pertaining to the difficulty in such approach have been emphasized, arguing that a conceptual analysis constructed from its constituent parts presupposes that these constituent parts can be defined precisely, which is not always a possibility. Others are also of the same perception, but withhold its significance in that it is the most dependable approach in interpreting law through the legal dogmatic method.¹¹ In light of

¹⁰ Jan Kleineman, ‘Rättsdogmatisk metod’ in Maria Nääv and Mauro Zamboni (ed) *Juridisk metodlära* (2 end. Studentlitteratur AB 2018), 26.

¹¹ Åsa Gunnarsson and Eva-Maria Svensson, *Rättsdogmatik – som rättsvetenskapligt perspektiv och metod* (1st edn, Studentlitteratur AB 2023), 126-127.

the thesis and its research question the interpretative approach has been deemed as the most suitable in relation to the legal dogmatic method.

Due to the nature of moral rights within the EU, the thesis additionally takes a comparative approach of the material scope of the right of attribution, examining the right's scope on the basis of Swedish and French law. Comparative law or comparative analysis has many definitions, where in this thesis it is construed to compare Sweden's and France's legal provisions with the purpose of determining similarities and differences. The outcomes are later processed by explaining their origin, comparatively evaluating the values in the different legal systems and searching the legal system's common core.¹² Since a comparative approach promotes an improved understanding of one's own legal system as well as the search for common principles common to a number of legal systems, it is viewed suitable for the thesis' research question.¹³ The comparative method is furthermore a vital tool in the EU's harmonisation work, where it is commonly used to determine the common core in European civil law.¹⁴ Whether the EU can use the right of attribution to verify human works, will be examined by a *de lege ferenda* approach, where the comparative examination will aid in that analysis.

1.3.2 Relevant Materials

When determining the scope of the right of attribution in a Swedish context, relevant legislation is first utilized, specifically the Act (1960:729) on Copyright in Literary and Artistic Works (Swedish Copyright Act). Legislation is the most important source of law, since the judicature, administrative authorities and individuals are bound by it, and its binding nature is affirmed by the Swedish Constitution. In instances where a court rules in contrary with the law, it can constitute a gross procedural error which can render in a relief for a substantive defect. For authorities, a decision which is in contrary with the law can be amended, or by a re-examination by the authority itself or by a higher instance.¹⁵ Legislation is therefore part of the relevant material in examining the moral right from a Swedish perspective. Like Sweden, the most significant source of law in France are legislations, including codifications and collections of statutes.¹⁶ Regarding the examination of France's attribution right the primary material is the collection of statutes within the field of intellectual property; *Code de la propriété intellectuelle* (hereinafter the French Intellectual Property Code). Regulations and directives regarding various copyright legislations and AI systems, are also utilized in view of relevant EU measures. Since both Sweden and France

¹² Michael Bogdan, *Komparativ rättskunskap* (2 edn, Norstedts Juridik AB 2003), 18.

¹³ Mary Ann Glendon, Michael Wallace Gordon and Paolo G. Carozza, *COMPARATIVE LEGAL TRADITIONS IN A NUTSHELL* (2nd edn. WEST GROUP 1999), 5.

¹⁴ Filippo Valguarnera, 'Komparativ juridisk metod' in Maria Nääv and Mauro Zamboni (ed) *Juridisk metodlära* (2 edn. Studentlitteratur AB 2018), 145.

¹⁵ Christina Ramberg, *Rättskällor – en introduktion i kritiskt tänkande* (2nd edn, Norstedts Juridik 2024), 19-20.

¹⁶ Bogdan (n 12), 157.

are EU members and the research question entails potential remedies for the EU regarding the right of attribution, it is part of the relevant material. As a final note, EU law's primacy over national law is also a relevant factor in the choice of EU legal sources.

The Swedish Copyright Act's legislative history is also used in the examination of the Swedish attribution right. Legislative history has however been argued as a controversial material on grounds that it is produced by subjects which lack democratic mandate, the purpose of the legislative history is to persuade the enactment of a law, making them deceptive and that they can become obsolete since they cannot observe societal changes. Legislative history is on the contrary deemed as a valuable source, since it fills an interpretive function, enabling law to be interpreted according to its aims and purposes, in turn, entailing legal certainty regarding future judgements.¹⁷ Katarina Renman Claeson and Christina Wainiki¹⁸ have also argued that since the Swedish moral rights provision has not been amended since the 1960's and due to the sparse amount of caselaw, the legislative history is a significant material in the examination of the right of attribution – where the same conclusion has been made in this thesis. The opposite applies however to France's legal system, where the legislative history is rarely used in interpreting law and it is therefore not utilized in examination of France's right of attribution.¹⁹

Case law from the highest instances is also utilised, for both Sweden, France and the EU. Case law in Sweden is not a binding source of law, however, authorities and courts follow it. It is also a vital material for law consisting of general terms, where case law aids in the interpretation for the general terms as well as for legislation which is difficult to interpret.²⁰ The Swedish attribution right consists of the term 'proper usage' which might be deemed as having a general character and Swedish case law is therefore utilised. The majority of case law is from the 20th century, where only two cases are from the 2020's. The age of the court cases are nonetheless taken into account, but have been deemed relevant due to the sparse amount.²¹ Regarding case law from France, similarly to Sweden, cases from the *Cour de cassation* is not formally binding, but it's rulings are applied by lower instances as well as authorities. Landmark cases are often published and commented in *Juris-classeur – La semaine juridique* (JCP) and *Recueil Dalloz-Sirey*, revealing the underlying legal arguments for the *Cour de cassations* decisions. Caselaw from *Cour de cassation* and, in applicable cases, commented case law by French scholars are part of the material.²² Additionally, the moral rights'

¹⁷ Ramberg (n 15), 49-51.

¹⁸ *Konstjuridik* (1st edn, JUNO version, Norstedts Juridik 2014), 106.

¹⁹ Bogdan (n 12), 157.

²⁰ Ramberg (n 15), 38-39.

²¹ Ramberg (n 15), 43.

²² Bogdan (n 12), 157-158.

position within the EU are examined by previous harmonisation measures and the Court of Justice of European Union's (CJEU) jurisprudence.

Legal doctrine as well as soft law from the Commission is also utilized. The most prominent material is the Commission's Second Draft regarding the AI Act²³ as well as various reports on the impacts of AI generated media. Sam Ricketson' and Jane C Ginsburg's work²⁴ is also of significance in determining what the Berne Convention stipulates regarding moral rights. As a final note, the various legal doctrine and soft law instruments are used as complementary sources in view of legislation, case law and legislative history with the aim of disclosing underlying arguments regarding the legal orders.²⁵

Finally, translation tools are utilized regarding the French material, due to the sparse amount of English literature on the French moral rights. The thesis therefore resorts to material which is in French and in view of limited understanding of the French language, translation tools such as DeepL and Google Translate are used in order to interpret the material.

1.4 Delimitations

In light of that the moral rights are not harmonised within the EU, the thesis examines the Member States' regulations pertaining to the moral rights, where it is limited to Sweden' and France's. The choice of the two jurisdictions are argued on two grounds. Sweden's legal system is chosen due to previous familiarity, rendering in a more comprehensive understanding of the legal provisions which are examined. The choice of France is motivated by the historical significance of the moral rights, in that the moral rights pertaining to copyright were initially recognized and developed by the French jurisprudence. France has therefore been deemed as a compelling jurisdiction in the comparative approach of the right of attribution.

Other moral rights, such as the right of integrity, are outside of the thesis' scope since the research question entails how human works can be verified as such. Due to the fact that the right of attribution is an author's right to attribute their works as theirs, no other moral rights have been deemed as relevant regarding such verification. In view of the economic rights, the majority of them are presently harmonised within the EU. As for the research question which inter alia seeks to establish in what way verification can be done at an EU level, and in view of the economic rights being harmonised and the essence of the economic rights, they are concluded as irrelevant in light of verifying a work's author. On the same ground, copyright's neighbouring rights as well as questions of obtaining copyright protection and the relevant

²³ 'Second Draft of Practice on Transparency of AI-Generated Content' (5 March 2026).

²⁴ *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (online edn, 3rd edn, Oxford University Press, 2022) <<https://doi-org.ludwig.lub.lu.se/10.1093/oso/9780198801986.001.0001>>.

²⁵ Ramberg (n 15), 70-71; 77.

criteria for such is outside the thesis' scope. The AI Act is only examined in view of the transparency obligations related to AI generated media. As for assisted works, where the question of obtaining copyright becomes relevant, and other aspects of the Act is further excluded.

Questions about enforcement, liability and fundamental rights will not be examined in depth. It will however be acknowledged in the analysis of the thesis' findings in order to facilitate a broader and more complex answer in the analysis of the right of attribution with the EU. Finally the WIPO Copyright Treaty is further excluded on the grounds that is specifically designated to computer programs and databases²⁶ and Directive 2012/28/EU (Orphan Works Directive) is exclusively applicable to works at public institutions²⁷, where the thesis' scope is limited to human verification in the digital space.

1.5 Disposition

In chapter 2, *The Legal Landscape and Implications of AI Generated Media*, the thesis presents the current problems with AI generated content and its impacts on the audience. It is further examined what is currently regulated regarding AI generated content and analysed in light of human verification of works.

Chapter 3, *The EU and the Right of Attribution*, introduces the moral right of attribution where the Berne Convention is initially examined. The right of attribution within EU is later analysed. The chapter concludes by an analysis of the findings in relation to available remedies and possible effects an harmonising measure of the right of attribution might entail.

The thesis takes on the comparative approach of the attribution right in chapter 4, *The Right of Attribution under Swedish and French Law*, examining the material scope of the right within the Swedish and French legal system. Aspects such as duration and the right of attribution's applicability is essential to the examination. The chapter concludes with an analysis of what is common and/or different in view of the two jurisdictions.

The thesis is concluded in Chapter 5, *Conclusion – The Right of Attribution Verifying Human Works*, by answering the research question: to what extent can the moral right of attribution function as a verification tool for human works in EU's digital landscape?

²⁶ WIPO Copyright Treaty (WCT) (Authentic text) TRT/WCT/001, art 4-5.

²⁷ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works Text with EEA relevance (Orphan Works Directive), Art 1.

2 The Legal Landscape and Implications of AI Generated Media

2.1 Introduction

This chapter explores the current digital landscape and the audience's experience with AI generated media, notably, the availability of distinguishing whether media is created by a human or an AI. The primary aim of the chapter is to examine what is currently regulated under EU law in view of AI generated content. The chapter focuses on the recently enacted AI Act and the obligations pertaining to marking and labelling of AI generated content. The possible impacts of AI generated content is further explored, including the perspective of the audience as well as the creative sector. The AI Act's obligations on marking and labelling content as AI generated or manipulated is analysed regarding its aims, implications and whether similar arguments can be made in relation to labelling human works.

2.2 The Impacts of Generative AI

The amount of AI generated content has exceptionally grown the last couple of years. In 2025 it was reported that 8 million AI generated deepfakes were shared compared to 500 000 in 2023. The rise of AI generated content further entails that the majority of the circulation happens on social media platforms and that AI generated media blurs the line between fiction and reality. Studies have further concluded that on average people struggle to distinguish between synthetic and authentic media, where the performance rate is close to 50 %. IT experts seem to bear the same difficulty, where it has been reported that they incorrectly perceived 62 % of AI generated content as human works.²⁸

AI generated media does not only leave the audience in a place of uncertainty whether something is AI or not, but also affects culture, quality and authenticity. It is argued that where platforms become saturated with machine-produced content, it is increasingly more difficult to distinguish genuine meaningful cultural expression from AI generated. It is further emphasized that AI will have adverse consequences on job displacements within the creative sector, estimating that 40 % of the roles within the creative industries, such as writers, composers and graphic artists, may be rendered redundant by 2030 due to AI systems replacing core functions.²⁹

It is further stressed that AI driven transformation extends beyond individual creators, where independent artists and small creative enterprises' market shares diminish, as platform-mediated distribution favours content optimized

²⁸ Mar Negreiro, *Children and deepfakes* (European Parliamentary Research Service, July 2025, PE 775.855), 2-3.

²⁹ CULTAI, 'Report of the Independent Expert Group on Artificial Intelligence and Culture' (Modicult 25 España, UNESCO, 2025), 34-35; 37.

for algorithmic promotion at the expense of originality and diversity. The growth of the AI market remains concerted in regions with advanced technological infrastructure, risking reinforcing and creating new forms of cultural dependency, where creative communities in less technologically developed regions rely on tools developed in centralized innovation hubs. One remedy to combat these problems are argued to be that multilateral bodies can bring together diverse voices to foster AI systems' alignment with inter alia protecting creator's economic and moral rights.³⁰

With the risk of digital media becoming more homogenous at the expense of diverse and genuine cultural expressions, as well as, the traditional artist's job market is becoming sparser, is there a mode for the audience to inhibit these effects by their choices of content consumption? Even though the public bears a hardship of distinguishing AI generated media from human created, the recently enacted AI Act stipulates requirements for marking and labelling AI generated content.

2.3 Marking Content as 'AI'

There are legislative proposals world-wide in order to combat AI-slop, where the EU has recently adopted the AI Act which recognises the hardship of distinguishing between AI generated media and human works. In fact, the very wording of the recitals is that it has increasingly become more difficult for people to distinguish human-generated and authentic content. By that difficulty, it erodes the integrity and trust in the information ecosystem, raising new risks of misinformation and manipulation. It is therefore necessary for new methods and techniques, in relation to the fast technological pace, to trace the origin of information. The AI Act stipulates in turn so-called transparency requirements for providers and deployers of generative AI.³¹

Providers of AI systems, which generate synthetic content, are required to ensure that such content is marked as AI generated or manipulated. Such marking needs to meet the requirements of effectiveness, interoperability, robustness and reliability. The marking and labelling AI content, does not however apply to systems which perform an assistive function for standard editing or do not substantially alter the input data provided by the deployer or the semantics thereof.³²

The Commission is presently, in addition to the obligations stipulated by the Act, drafting guidelines on the marking and labelling of content which is generated with, manipulated or made by an AI. The guidelines are yet to be adopted, however, they aim at being a practical, proportionate and useful tool

³⁰ CULTAI (n 29), 34-35; 37.

³¹ AI Act, recital 133.

³² AI Act, art 50 (2).

for both providers and deployers of generative AI systems of all sizes and sectors in the compliance of the marking obligations under the AI Act. Presently, there is no single marking approach which meet those requirements, and providers are to implement a multi-layered marking approach in order to ensure that the marking of AI generated content meets the requirements. Such multi-layered marking includes that the content has digitally signed metadata, imperceptible watermarking techniques interwoven within the content, and, as an optional supplementary measure, fingerprinting and logging facilities.³³

In view of the four requirements of effectiveness, interoperability, robustness and reliability, markings are effective when the solutions ensures that natural persons can access available disclosures and detection mechanisms, in turn understanding the meaning of detection results. Natural persons are to use those results to make informed decisions, reducing the risk of deception and manipulation, supporting trust and integrity of the information ecosystem. Reliable marking entails that each marking, corresponding detection, indicates how well it distinguishes AI generated or manipulated content from human written content. In the measurement of accuracy of the detection of AI generated or manipulated content, relevant state of the art metrics are to be used, such as false positive rates and false negative rates of the detection and error rates in decode marker information. Such rates will be demonstrated on samples of AI generated and unmarked human authored content. The marking of AI content is robust, when such markings achieves a high level of robustness to common alterations and to adversarial attacks. Finally, interoperability ensures that the marking and detection solutions of different AI system providers have common marking and detection standards.³⁴

Additionally, complementing the marking- and labelling obligation for providers of generative AI systems, deployers generate deepfakes with generative AI systems, are to mark, in a machine-readable format, its contents detectable as artificially generated or manipulated. The marking should be clear and user-friendly in a manner that is appropriate to the type of modality and context of dissemination. Furthermore, labelling is to be done in view of the audience and their AI literacy, as well as, what kind of content it is, for instance videos and audios. There is also a proposal for an EU icon which is to be used in the labelling of AI content.³⁵ There are however limitations. Such marking shall not impede the right to freedom of expression and the right to freedom of the arts and sciences guaranteed in the Charter, particularly, where content is part of an evidently creative, satirical, artistic and fictional or analogous work or programme. It is further limited in cases where such disclosure might impact the display or enjoyment of the work and

³³ Commission (n 23), 3; 10-11.

³⁴ Commission (n 23), 17-18.

³⁵ AI Act, art 50 (4); Commission (n 23), 26; 28.

is limited to the disclosure that the work is generated or manipulated by AI.³⁶ Regarding AI generated texts for purposes of informing the public, no disclosure is obliged where it has undergone human review, editorial control and a person holds editorial responsibility.³⁷

2.4 Implications of AI labelling

The marking and labelling obligation of AI generated media lies both on the providers of AI systems and on the deployers that generate the media in question. Disclosing media as AI generated or human created has been argued as a solution for facilitating distinguishment, it is however not entirely flawless. Watermarkings can for instance be easily removed and companies such as Google are developing watermarks which are invisible to the human eye. Furthermore, such watermarking needs to be consistent across all industries in order to be effective – if only a small number of market actors are marking their content, it may create confusion among users, who could misinterpret unlabelled AI content as authentic.³⁸ The Commission guidelines does nevertheless have the requirement of robustness which in essence seeks to ensure that watermarks are not removed, anyhow if such watermarking is invisible to the audience the question of effectiveness can be questioned.

Even though labelling informs users that content is AI generated, which facilitates users to make informed decisions about content consumption, and curbing the spread of AI generated material in general, it is also suggested that AI labelling may not be a complete remedy. Labelling alone, does not however seem to decrease the persuasive effects of AI generated messages.³⁹ Another effect of AI labelling is its impacts on user engagement. Where content was labelled as human created, AI generated and AI enhanced, it was concluded that such labelling affected the participants engagement with the content. The lowest engagement was for AI generated content, where the response was negative to AI enhanced content as well. If the disclosure happened at a later time, the response was still negative for AI generated media, but was less for AI enhanced, compared to when the labelling was done in the beginning. The greatest interaction was however with media labelled as human created and participants' user engagement was the most negatively impacted for AI labelled emotional content compared to informational.⁴⁰

³⁶ Commission (n 23), 33.

³⁷ AI Act, art 50 (4); recital 134.

³⁸ Negreiro (n 28), 5.

³⁹ Isabel O. Gallegos and others, 'Policy Brief: Labeling AI-Generated Content May Not Change Its Persuasiveness' [2025] *Stanford University HAI Policy & Society*, 5.

⁴⁰ Freya Seeger, Michael Wessel and Christiane Lehrer, 'AI content labeling and user engagement on social media: The role of AI level, content type, and disclosure timing' [2026] 36, 31 *Electron Markets* <<https://doi.org/10.1007/s12525-026-00883-2>>, accessed 24 April 2026.

2.5 The Impacts and Regulations of AI Generated Content

The AI Act stipulates a dual responsibility for marking content as AI generated as part of its transparency obligations. Providers as well as deployers are to mark their outputs as AI generated or manipulated – meaning the providers, without generating any content themselves, are required to ensure that any content deriving from their systems are marked as AI generated. It needs to be noted however, that the Commission recently welcomed the amendments of the AI Act with the aim of making it simpler and more innovation-friendly.⁴¹ A comparison can nonetheless be made between marking AI content and traditional artist.

Where the authorial artist has completed a work, they alone can chose to attribute it with their authorship – indicating the very origin of their creation. The attainments of AI marking is to ensure that the person interacting with an AI can ascertain themselves that the content is generated by an AI. Where the right of attribution however seeks to uphold the interests of authors to be attributed, AI markings are obligated in view of the audiences’ interests to know the derivatives of the content. On the other hand, there are no obligations for authors to indicate that they are the creator of a work and can [and have the right] to remain anonymous. Regardless, the effects can be similar in view of the presumptive effects of attributed works. Where a work has been attributed by the author, there is a presumption of authorship, rendering in that the public can to a certain extent be assured by the attribution who the author is.⁴² Where AI content is marked as AI, the perceiver knows that it is generated by AI. Notably, the audience of an authorial work cannot force nor has a right in attaining who the author of a copyright work is. The audience of AI generated content are however to have the available remedy to ascertain themselves that their content is AI generated.

2.5.1 The Marking Obligations

The marking of AI generated content needs to meet the criteria of effectiveness, interoperability, robustness and reliability. Whether the requirements are met, the guidelines signify a comparison with human works. As affirmed by the Draft Guidelines⁴³, marking is reliable when the audience can clearly distinguish between AI generated content and human created, and it is effective when such marking enables the audience to make informed decisions about their content consumption. It is therefore clear that the EU

⁴¹ See Commission, 'EU agrees to simplify AI rules to boost innovation and ban 'nudification' apps to protect citizens' (7 May 2026, European Commission) <https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_26_1024/IP_26_1024_EN.pdf> accessed 7 May 2026.

⁴² DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the enforcement of intellectual property rights (Enforcement Directive), art 5 (a).

⁴³ See Chapter 2.3.

recognizes the hardship of distinguishment, but also the value of authorial works. If human works are the basis of evaluation whether marking meets the requirements of effectiveness, interoperability, robustness and reliability, the central role of human works is implicitly recognized.

However, as seen by the arguments that marking might not be as effective in distinguishing media, as in watermarking can be removed [which the guidelines seek to address] and that they can be invisible to the human eye. Nonetheless if watermarks are invisible to the audience and can only be detected by using other technological methods, is it effective in upholding the transparency obligations? Taking into account today's social media platforms, that are fast paced with algorithms pushing new content every second, will the audience ascertain themselves if something is watermarked or not? An initial observation is probably not, since the platforms are construed in a way to make sure that the user is constantly engaged and does not leave the platform. In view of the previous findings⁴⁴, that users seem to be less interactive with AI content, platforms might however have the interest to not disclose AI generated media, or the opposite, disclosing it in order to communicate to their users what is AI generated or not, establishing themselves as a reliable platform. Nonetheless, it needs to be noted that platforms does not have any obligations arising from the AI Act to mark or disclose what is AI generated, since they are neither deployers nor providers.⁴⁵ In the case they are generating their own AI content, an obligation to mark their content will be relevant in applicable cases.

In addition to the obligations for providers, deployers are also to mark their content, but only deepfakes, meaning, content resembling existing objects or persons and is deceptive in view of authenticity or truthfulness.⁴⁶ It is further limited in cases where deepfakes are part of a clear artistic expression, and arguably enters into the realm of copyrighted works. Such AI markings are not to impede the rights of artistic freedom or the enjoyment of the content. What that might practically entail, is difficult to predict, however it might render in that markings of AI generated content of clear artistic expression is limited in a way it does not affect the art work itself or the enjoyment of it. Subjects who are seeking to interact with content produced by humans are arguably in a different position in situations of artistic AI content. Marking of such content might render in a less evident mode in order to not impede the artistic value of the AI generated art, questioning whether it will be detectable to the audience that the content is produced by an AI. For instance the

⁴⁴ See Chapter 2.4.

⁴⁵ On the contrary, see, REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services (Digital Services Act), art 35 (k) in regard to platform providers' marking obligations for deepfakes.

⁴⁶ AI Act, art 2 (60).

placement and time of the disclosure that the content is AI might vary in those circumstances.

It is further a question of who decides whether content is an artistic expression. Notably it must be the deployer generating the content, meaning that they will be in a position to decide what mode the AI mark is to be construed and whether it can be done less evidently due to their artistic freedom. In those instances, and taking into account the audience's negative perception of AI generated content, it is in the deployers' interest to mark their content as discreetly as possible, arguing that it would otherwise impede their artistic freedom.

As a final note, it needs be stressed that the requirement of marking AI generated content is only in relation to deep fakes as well as when the subject generating the AI media, does so professionally and not in their personal activity.⁴⁷ Where a deployer generates content which are not deepfakes or generates such in their non-professional activity, there is no obligation to mark the content, putting the audience in a place of further uncertainty whether it is human made. As emphasized by the report⁴⁸, in order for marking to be effective all content needs to be marked. Whether providers' obligation to mark will complement the limitation to deepfakes and professional activity, is difficult to assess at hand. Seemingly, it might be a complementary measure, under the condition that the markings provided by the providers are accessible and easily identifiable to the audience.

2.5.2 The Right to Obtain a Marking

Whether the audience is a rightsholder of AI markings or that the transparency requirements are merely obligations for the providers and deployers can be further analysed. Initially it needs to be observed that providers' obligations, are not to de facto mark the content, but to implement measures which do. The obligation of actually marking lies on the deployer, which is limited to deepfakes. In view of the Charter of Fundamental Rights of the European Union (the Charter), which is to be considered when implementing and applying Union law⁴⁹, the obligation of marking can be argued as a right for the audience interacting with AI media. For instance, the freedom of expression and information includes a right to receive and impart information and ideas without interference by a public authority.⁵⁰ It needs to be noted, that the right only applies to public authorities and no other bodies which are not state actors. If an individual seeks to ascertain themselves whether something is AI generated, it can be argued that the public authority enforcing the transparency obligations on providers or deployers needs to observe the right

⁴⁷ AI Act, art 3 (4).

⁴⁸ See Chapter 2.4.

⁴⁹ CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2000/C 364/01) (Charter), art 51.

⁵⁰ Charter, art 11.

in the enforcement. The provision is however not applicable by itself in relation to a provider or deployer who does not seek to disclose the origins of its content and only in the implementation of EU law. Contrary, where there is a dispute and the public authority is applying the provision of AI markings, the Charter may nevertheless be observed, rendering in that the obligations to mark AI is given full effect, in view of the interests of the audience seeking to disclose whether media is AI generated.

There is however no negative obligation of marking – social media platforms and other market actors are not obliged to indicate or label content which is not produced or manipulated by AI systems. One can however question, does content which is not marked or labelled indicate that is created by a human? Plausibly not, since the marking and labelling of AI generated content is limited by the exceptions of artistic freedom and only applies to deepfakes regarding deployers. Since the obligation of marking is not absolute, there is room for unmarked AI content to circulate the internet. Does such marking obligation, which is to improve the audience choice of media consumption and the ability of distinguishing fulfil those attainments? Where only some AI generated content is marked, and other is not, the audience is still uncertain whether content was created by a human or an AI. Others have also emphasized that without early and consistent identification of AI generated media the line between human and AI generated media may vanish, further complicating or overriding knowledge integrity and societal structures.⁵¹

2.5.3 Impacts on Authorial Works and Creative Sector

Even though there are obligations on marking AI generated content, the limitations of the obligations risks that authorial works fades into the background, emphasizing the need to verify whether content is created by a human. Not only in order to uphold the interests of authors, but also since users are less interactive with AI generated content – making it an interest for social media platforms who want to retain their users. In view of the cultural impacts stressed in the Chapter⁵², the stakeholders are also society at large in upholding the interest of distinguishment, reiterating that AI generated content dilutes cultural expressions as well as the authenticity of such expressions. For instance AI generated emotional content seems to not be able to replace such human made content, where the audience's perception was the most negative impacted for AI labelled emotional content.

However it can be argued that genuine cultural expressions are not only inhibited by AI systems, but also creator's which lack the relevant experience related to the cultural message their work is portraying. Nevertheless, observing that AI systems are able to create content faster than traditional artists, as well as, that the majority of AI facilities are concentrated in

⁵¹ Katalin Feher, *Generative AI, Media, and Society* (1 edn, Taylor & Francis Group 2025) <<https://doi.org/10.4324/9781003591023>> accessed 20 May 2026, 122

⁵² See Chapter 2.2. .

concerted regions, the outputs will be impacted by the facilities' geographical location.⁵³ AI systems generating inaccurate cultural expressions are therefore rendering in an acceleration of more homogenous content. It is also to the detriment of creator's who create works through their free and creative choices and who are arguably better representatives of such expressions. Where artists have previously been able to create works from their own cultural backgrounds, algorithms and AI generated content risks that the artists' audience becomes smaller, to the detriment of the creator sector at large affecting their job market⁵⁴. The issue of markings is exacerbated in view of third parties manipulating works in removing attributive marks or mimicking such marks as well as anonymous authorial works which do not bear an attributive mark. An audience seeking human verification, taking into account unmarked AI generated media, is then in a more difficult position in ascertaining such.

The obligations to mark generative outputs are not absolute. Deployers are only to mark deepfakes and in a way that it does not impede their artistic freedom. Watermarkings, corresponding to the obligations for providers can be removed and be invisible to the human eye. The AI Act therefore leaves room for AI content to circulate the internet without being marked, leaving the audience in a place of further uncertainty what is created by a human and what is not. For authors which obtain copyright protection for their works, they have *inter alia* the right of attribution, entailing that they have the right to attribute their works as theirs. The moral right of attribution and the obligations arising from the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention)⁵⁵ can therefore constitute a complementary measure.

⁵³ See Chapter 2.2.

⁵⁴ See Chapter 2.1.

⁵⁵ Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979) TRT/Berne/001 (the Berne Convention).

3 The EU and the Right of Attribution

3.1 Introduction

Considering that the obligations on AI markings are limited and that their efficacy in distinguishing AI content from human works can be questioned, this chapter examines the right of attribution as stipulated by the Berne Convention as well as its place within the EU. The right of attribution entails a right for an author to attribute their work and ascertaining their authorship, where in this chapter the right's place and history within the EU's legal order it is explored, in order to analyse the availability of harmonising the right in facilitating distinction. The chapter aims at scrutinizing and give background to the moral rights within the EU as well as analyse a possible EU attribution right. Firstly, the right of attribution arising from the Berne Convention is examined, taking into account that all EU Member States are contracting parties.

3.2 The Berne Convention's Right of Attribution

In the nineteenth century, the concept of moral rights originated from the French judiciary in order to combat authors' problems in an era of mass market publication. The idea of moral rights stems from that the author is personally invested in their work, rendering in a special relationship, going beyond the economic motives of protection, where the moral rights legally recognises that relationship. Due to the nature of the development of the moral rights, they vary from jurisdiction to jurisdiction. Nevertheless, two rights are universally recognized and stipulated in the Berne Convention – the right of attribution and the right of integrity.⁵⁶

Article 6^{bis} of the Berne Convention stipulates that the right of attribution entails that the author has the right of authorship to their work. In essence it means that the author of a work has the right to have their authorship recognized in a clear and unambiguous manner and is fundamental to the way the work is presented to the public. The details, and in what manner attribution is to be construed, is not governed by the article. Nonetheless, each copy of a work is to be accompanied by the author's name or pseudonym in an obvious place, such as on the title page, or at the head or bottom of the work, in cases of artistic works.

It is affirmed that there are three situations where an author can invoke their right of attribution; where a licensee, assignee or third party:

- (i) does not make any reference to the author on copies of their work, or removes such references,

⁵⁶ Sundara Rajan (n 9), accessed 28 January 2026, 4-5.

- (ii) puts the name of another person on the copies implying that that person is the author and
- (iii) where the name of the true author appears on copies of the work, but is done in a way it is difficult to detect.⁵⁷

The right of attribution is notably a positive right, it is nevertheless questionable if it extends to the negative, permitting authors to prevent their names from being attached to works which they are not authors of. Regarding anonymous and pseudonymous works, the Berne Convention stipulates that there is no obligation for an anonymous author to reveal themselves under their own names. An analogy can be made regarding a negative right of attribution; however, it seems like the Berne Convention does not require such right for its signatories.⁵⁸

3.3 EU and Moral Rights

The EU is a contracting party to the *Agreement of Trade-Related Aspects of Intellectual Property Rights* (TRIPS) which inter alia establishes that its Members are to comply with the provisions of the Berne Conventions, excluding however Article 6^{bis} stipulating the moral rights. Regarding the Berne Convention, all EU Member States are contracting parties, but not the EU itself.⁵⁹

In 1988, the rationale for not adopting any harmonising measures regarding the moral rights, was due to the fact that all EU Member States were contracting parties to the Berne Convention and the remaining legislative differences did not affect the functioning of the internal market.⁶⁰ Almost a decade later, the Commission stressed on the contrary that with the arrival of the information society, the question of moral rights were becoming more urgent, emphasizing that digital technology would make it easier to modify works – urging for an examination of whether the lack of harmonising measures would be acceptable in a new digital environment.⁶¹ Nonetheless,

⁵⁷ Ricketson and Ginsburg (n 24), ch 10.29.

⁵⁸ Berne Convention, art 7; Ricketson and Ginsburg (n 24), ch 10.29.

⁵⁹ TRIPS Agreement, art 9 (1); WIPO, ‘IP Treaties > Contracting Parties/Signatories > Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (Total Members: 166)’ (*Treaties Collection*) <<https://www.wipo.int/wipolex/en/treaties/parties/231>> accessed 29 January 2026; WIPO, ‘Contracting Parties/Signatories > Berne Convention (Total Members: 182)’ (*WIPO-Administered Treaties*) <https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15> accessed 29 January 2026.

⁶⁰ Commission, ‘GREEN PAPER ON COPYRIGHT AND THE CHALLENGE OF TECHNOLOGY – COPYRIGHT ISSUES REQUIRING IMMEDIATE ACTION’, COM(88) 172 Final, 7.

⁶¹ Commission, ‘GREEN PAPER - Copyright and Related Rights in the Information Society’, COM(95) 382 final, 67.

the EU's adamancy to not harmonise the moral rights has continued into the 21st century.

Nonethelss, it was later acknowledged that the Member States' fragmented approaches on moral rights could theoretically harm the functioning of the internal market in a digital environment, where actions such as linking and framing affect the author's right of attribution and where content passes through networks are being exploited across borders. It was however concluded on the contrary, that the international framework had an adequate level of protection and that there was no evidence that it had an effect on the internal market.⁶²

The primary reasons as to why the moral rights have not been harmonised is because of the perception that fragmentation does not impede the internal market. Others have however argued the opposite, emphasizing that the fragmentation in Member States' legal systems are illustrated by the rights' varying scope depending on the Member State, even though the right might be recognized in multiple Member States. It is also argued that further complications arise in the age of digitization. Traditionally, users of works were passive consumers, whereas nowadays they have technical tools which enable them to change, combine and adapt protected works and make the results available to a wide audience, running into conflict with the author's moral rights, including the attribution right. Due to the fragmentation in the scope and term of moral rights, EU-wide uses of user generated content, especially content available on platforms, are hampered. Such fragmentation in law is argued to hamper intra-Community trade, where the EU has the competence to enact moral rights legislation, including European intellectual property rights.⁶³

3.4 Moral Rights' Position within the EU

Even though moral rights have not been harmonised by the EU legislator, it has in the past been a matter for the EU judicature. In the early days of the CJEU, it concluded that the moral rights of copyright is a subject matter for EU.⁶⁴ In cases of abuse of dominant position, moral rights has been further commented – specifically where the right holder exercises its exclusive right of reproduction which constitutes an abuse under Article 102 Treaty of the Functioning of the European Union (TFEU). The CJEU argued that in such cases the copyright is no longer exercised in a manner which corresponds to

⁶² Commission, 'COMMISSION STAFF WORKING PAPER on the review of the EC legal framework in the field of copyright and related rights', SEC (2004) 995, 15.

⁶³ Katharina de la Durantaye, 'Dualist vs. monist approaches to copyright within the European Union – an obstacle to the harmonization of moral rights?' in Ysolde Gendreau (ed.) *Research Handbook on Intellectual Property and Moral Rights* (1 edn, Edward Elgar Publishing Limited 2023), 159-161.

⁶⁴ Joined cases C-92/92 and C-326/92 *Phil Collins v Imtrat Handelsgesellschaft mbH and Patricia Im- und Export Verwaltungsgesellschaft mbH and Leif Emanuel Kraul v EMI Electrola GmbH* [1993] EU:C:1993:847, 19-25.

its essential functions and violates Article 36 TFEU establishing the exceptions for the prohibitions on restrictions on imports and exports on goods. Article 36 TFEU aims inter alia at protecting the moral right of works and award effort for that work while respecting the aims of Article 102 TFEU.⁶⁵ In view of the judgements' age and the pertaining legal order at that time, the judgements are most likely not valid law. They do however signify how moral rights can interact with EU law and its effects. Nonetheless, the moral rights are arguably, to some extent, regulated in EU law.

Traces of the right of attribution can for instance be found in Directive 2001/29/EC (InfoSoc Directive). Regarding the author's exclusive right to making their work available to the public and reproduction right, Member States can make exceptions to those rights under the condition that the author's name is attributed to the work, when the work is used for educational and informatorily purposes, as well as, quotations when criticising and reviewing a work. There are also exceptions regarding the use of protected works for caricature, parody and pastiche, which have been commented by the CJEU.⁶⁶ Regarding parody, the CJEU concluded that parody should display an original character of its own and that it can reasonably be attributed to a person other than the author of the original work. The general exceptions established in the InfoSoc Directive, seek to achieve a fair balance between the rights and interests of authors and the rights of users of protected subject-matter. The CJEU also emphasized that where a work is used, depicting a discriminatory message, it is a legitimate interest that the author ensures that the work is not associated with such a message.⁶⁷

Directive (EU) 2019/790 on Copyright in the Digital Single Market (CDSM), which aims to harmonise EU law on copyright and related rights, particularly digital and cross-border uses of protected content, includes provisions related to the right of attribution. For instance, Member States can provide exceptions to the exclusive rights for digital uses of works in educational establishments under the condition that the source, including the author's name is stated. Additionally it is emphasized, in view of never-in-commerce works and the related expectations and limitations, the importance of respecting the moral rights of such works. Nonetheless according to the CDSM, Member States are free to legislate regarding the moral rights of copyright as it was concluded

⁶⁵ Cases T-69/89 *Radio Telefis Eireann v Commission of the European Communities* [1991] EU:T:1991:39, 71; T-70/89 *British Broadcasting Corporation and BBC Enterprises Ltd v Commission of the European Communities* [1991] EU:T:1991:40, 58; T-76/89 *Independent Television Publications Ltd v Commission of the European Communities* [1991] EU:T:1991:41, 56.

⁶⁶ DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive), art 5.3 (a); (c-d); (f); (k).

⁶⁷ Case C-201/13 *Johan Deckmyn and Vrijheidsfonds VZW v Helena Vandersteen and Others* [2014] EU:C:2014:2132, 21; 26; 31.

to not hamper the harmonising effects of the directive.⁶⁸ Additionally, the Commission recently submitted a ‘Call for Evidence’ regarding possible amendments of the CDSM. In view of the advancement of generative AI and its impacts on the cultural and creative sectors, the Commission seeks to evaluate what the challenges are for right holders of copyright works. It does not however mention moral rights, and whether that might be an implication can only be evaluated in the future.⁶⁹

As a final note, Directive 2004/48/EC (Enforcement Directive), stipulates a presumption rule regarding authorship. Authors of literary or artistic works are presumed to be such and entitled to institute infringement proceedings, where their name appears on the relevant work in the usual manner.⁷⁰ However, Directive 2006/116/EC (Term Directive), harmonising the duration of author’s rights, explicitly states that it does not apply to the moral rights of copyright.⁷¹

3.5 A European Attribution right

3.5.1 Attribution in Distinguishing

The Berne Convention obliges its signatories to respect the moral rights of authors – the extent of which is within the signatories discretion as long as it contains the fundamental elements of the right of attribution and the right of integrity. In a digital environment, where an author has transferred their work to social media platforms, Article 6^{bis} should be applicable. Regarding works which are falsely attributed, it could fall within the realm of where persons attributes their name on another person’s work, indicating that they are the author. It can also be questioned whether it could be applicable in cases of AI markings. For instance where an authorial work has been wrongly marked as AI, the use of an AI renders in a removal of attributive marks and the applicability in situations regarding un-marked media and anonymous works.

It needs to be affirmed however that AI markings will only be a question when the generative system itself has marked the content, meaning that the system needs to be utilized in some way. Deployers are only required to mark their content which are deepfakes and it is limited where the content is a clear

⁶⁸ DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (CDSM), art 1(1); 5(1) a; recitals 23; 37.

⁶⁹ Commission, ‘CALL FOR EVIDENCE: Report on the review of the Copyright in the Digital Single Market Directive / Targeted initiative for a better copyright environment for European creativity and innovation’ (13 May 2026) Ref. Ares(2026)4845636.

⁷⁰ DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the enforcement of intellectual property rights (Enforcement Directive), art 5 (a).

⁷¹ DIRECTIVE 2006/116/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on the term of protection of copyright and certain related rights (Term Directive), art 1; art 9.

artistic expression. There are therefore no obligations under the AI Act for the platform to mark content as AI, as long as the work is not transferred to an AI system or the platform is creating their own AI content. Where works are initially made without the involvement of an AI and later manipulated by a third party using an AI system, the question of attribution can therefore arise.

Article 6^{bis} prohibits where another person's name appears on the genuine author's work, whether wrongful AI markings can be equated to such actions needs to be analysed. Initially, it should be answered in the negative, from the perspective that presently AI generated works cannot be authorial works. The Convention refers to two or more authors which have been wrongfully attributed – an AI generated work seemingly does not have an author and an AI marking can therefore not be equated to attribution. It can however be viewed differently when evaluated by the aims which the right of attribution seeks to protect.

It is stipulated by the Convention that the right of attribution is personal to the author of the work and the author can decide whether they want to be attributed to their work or remain anonymous. In cases where an AI mark has replaced an initial attribution, it can constitute a violation of the author's right of attribution. In those cases it is undisputed that the author seeks to establish their authorship through attribution. Where that has been obstructed by an AI marking, it ought to be a violation, since the very AI marking signals to the audience that the work is not created by an author but an AI, in turn violating the author's right to attribute their work. By comparing what was established in Chapter 2, AI markings are to be done in order to signify that the content was either generated or manipulated by AI. In cases where the mark signifies that the work is generated by AI, accompanying or replacing the author's initial attributive mark, that in itself has the effect of stripping the author's right to be recognized, signalling that it is no longer a work by the author, but the AI.

As for authorial works which are uploaded to an AI system, where the initial author's signature is removed, not only will the initial attribution not be present but it will also be embedded with AI watermarks and other markings that are a part of the provider's transparency obligations. Removal of author's attributive marks, irrespective of if it is done by an AI, are prohibited under the Convention. Not only does it infringe the personal nature of the right, in that the author had initially made the choice of attributing their work, which is later obstructed by a third party, but implications are also rendered in view of the perceivers.

The implications for the audience where such works are circulating will not only be that they are perceived as none-authorial works, in view of that the previous marker indicating that is authorial is removed, but also embedded

with the provider's marking obligations. Furthermore as studies have shown⁷², their interaction with the work itself will be limited. The effects on the author is that their recognition that they seek to establish with their attribution will be to the detriment. Additionally, the impacts on the audience, seeking to ascertain themselves whether content is human made, the marking will signal that an authorial work is not human made. The difficulty in distinguishing human made works in relation to AI generated is therefore exacerbated in those instances, leaving the audience in further uncertainty.

The problem is further complicated in view of anonymous works. As reiterated, the right to remain anonymous, as well as attributing works, lies on the author of the work. The audience cannot force under intellectual property law, especially not under the Convention, who the author of an authorial work is or that a work needs to be attributed. Due to the personal nature of the right of attribution, the question of human verification can therefore not lie on the public interacting with the work. Furthermore, since anonymous works are not attributed, it can be argued that they are at greater risk of being manipulated by AIs and in turn being marked. AI manipulation of works could be considered as a violation of the right of integrity, which is outside of the thesis' scope, but also the right of attribution in cases of pseudonyms. Nevertheless, where an AI marking has been placed on a work rendering in a complete deletion of the author's name it is probable, that the Convention's prohibits its signatories to allow such actions.

3.5.2 EU Right of Attribution

The Berne Convention leaves its signatories an extensive discretion to stipulate the details of the moral rights, pertaining to the fragmentation of the right of attribution. As reiterated, the EU in itself is not a signatory to the Convention and Article 6^{bis} is explicitly excluded in the TRIPS Agreement pertaining to the differing scope of the attribution right. The availability for the EU to legislate an EU-wide attribution right is therefore analysed.

The main objective to not harmonise the moral rights has been that fragmentation of moral rights does not affect the functioning of the internal market. Some scholars do however argue the opposite, where I am of the same perception. Since all EU Member States are signatories to the Berne Convention, upholding the moral rights, every copyrighted work within the EU can expect some moral right protection. Nevertheless, as will be demonstrated in Chapter 4, even though two or more Member States are signatories, the scope pertaining to the moral rights may vary. Where the EU has legislated in areas of copyright, harmonising [to a certain extent] the economic rights enabling the free movement of copyrighted works, an author which has its work circulating within the EU will be uncertain to what extent their moral rights will be upheld. For instance, in some Member States the

⁷² See Chapter 2.4.

limitations of attribution might be greater, rendering in that the audience is unsure whether the use of the work is lawful or whether it is an authorial work, in turn inhibiting the author in establishing their name as an artist. Due to fragmentation, a work might be attributed in one Member State and not in another. In light of previous arguments, the right of attribution not only acts as a verifier for who the author of the work is, but also as a vital tool for upholding the individual author's economic rights. By not harmonising moral rights, the author as well as the audience is uncertain in view of the applicable rules for attributing works circulating within the EU. The discrepancies in law, including the material scope, and in view of the possibilities of manipulating works which affect the right of attribution, have also been argued as a difficulty in enforcing moral rights within the digital environment.⁷³ Furthermore, the arguments for harmonising the economic rights have been to ensure the smooth functioning of the internal market in regard to copyrighted works, where it needs to be emphasized that no single copyright legislation can be obtained if the moral rights are not harmonised. Copyright is inherently both economic and moral rights, and where the moral rights are ignored, no such regime can be attained.⁷⁴

Even though moral rights are not explicitly harmonised, it has arguably been subjected to some legislative provisions. For instance, the Enforcement Directive stipulates a presumption for authorship of attributed works which is done in the usual manner. What usual manner entails is nonetheless uncertain. For instance, the definition can either be dependent on Member States' national laws or be regarded as an autonomous concept of EU law.⁷⁵ Either way, what usual manner entails has not been determined by the CJEU and will as of now vary from Member State to Member State, rendering in further discrepancies in Member States' laws. However as stipulated by the directive, it is not applicable to moral rights. One might nevertheless question if such a provision does not have a moral right character. The rule for presumption of authorship will nonetheless have the effect of signalling who the author of a work is, in turn whether it is a human work.

Additionally, regarding authors' exclusive rights under the InfoSoc Directive and the CDSM, there are obligations to attribute the work to the author where the stipulated exceptions have been legislated. Even though the Directives does not include any provision governing the right of attribution nor moral rights in general, the previous provisions are nonetheless within the realm of moral rights, since it stipulates an obligation to attribute the work to the author which in essence is the right of attribution. It is however contrary to what is

⁷³ Gillian Davies, 'Moral Rights in the Borderless Online Environment' in Johan Axhamn (ed) *COPYRIGHT IN A BORDERLESS ONLINE ENVIRONMENT* (1st edn, Norstedts Juridik AB 2012), 37-47.

⁷⁴ Irma Sirvinskaite, 'Toward Copyright Europeanification: European Union Moral Rights' (2010) 3 *Journal of International Media & Entertainment Law* 263, 271.

⁷⁵ See eg Case C-590/23 *CG and YN v Pelham GmbH and Others* [2026] EU:C:2026:290, 34.

stipulated in the Berne Convention. The Berne Convention stipulates that an author's moral right is independent to their economic rights, where the Directives stipulate an obligation to attribute the author of the work, once the author's exclusive [economic] rights are limited in the certain instances.

Additionally, the other exceptions to authors' exclusive rights under the InfoSoc Directive have been subjected to the CJEU's jurisprudence. Even though the judgement does not encompass the right of attribution, a clear moral rights-argumentation can be disclosed shedding a light on how the other exceptions regarding the attribution right might be argued in the future.

Regarding parody, the CJEU⁷⁶ emphasized in particular the interest of the authors, specifically situations where the author does not want to be associated with works which depict discriminatory messages. The reasonings are similar to that of moral rights, in that the CJEU argues from the perspective of authors' interests and choice relating to their works being utilised as a parody, similarly to the personal nature inherent in moral rights. Arguably the judgement signifies how similar reasonings might be construed in relation to the other exceptions. For instance, in situations where an author's exclusive right has been limited it is in their interest to be attributed, upholding the very personal nature pertaining to the right of attribution. Such a judgement would de facto have an harmonising effect in instances where attribution is obligated and in turn constitute legal effects on the right of attribution within the Member States' jurisdiction. It needs to be noted that a judgement similar to the one in the previous chapter⁷⁷ has not been delivered in relation to the attribution requirements.

The fragmentation of moral rights undeniably obstructs the functioning of the internal market, in that the moral rights pertaining to copyrighted works differ from Member State to Member State which in turn inhibits authors' rights depending on the Member State. In view of the uncertainty whether media is created by an AI or a human, the right of attribution could complement the AI marking obligations in that assessment, observing the presumption rule of authorship for attributed literary or artistic works.

Furthermore, where an AI marking has been placed on an authorial work, impeding the detection of authors' initial attribution, whether those instances might fall within the scope of the Convention can only be answered in the light of national provisions implementing the Convention. The same applies to the situations whether an author has a right stemming from the right of attribution to object that their authorship is being attributed to AI generated works or where AI systems copy or imitate authors' attributive marks. In what way a attribution right is to be construed within EU law in order to aid the

⁷⁶ See Chapter 3.4.

⁷⁷ See Chapter 3.4.

distinguishment between human works and AI generated media, guidance will be taken from the Swedish and French legal system.

4 The Right of Attribution under Swedish and French Law

4.1 Introduction

In light of that the right of attribution is not harmonised within the EU and its adversarial effects on authors, authorial works and the audience, this chapter examines Sweden's and France's scope of the right, including the material and temporal scope. Questions of violations and collaborative works in light of the right of attribution are included. The right of attribution is later compared and analysed in relation to the two legal systems. The chapter concludes by analysing how the two legal systems' right of attribution can be interpreted within an EU context in relation to verifying works as human works.

4.2 Sweden

4.2.1 The Swedish Copyright Act

In accordance with the Swedish Copyright Act⁷⁸, when copies of a work are prepared or when the work is made available to the public, the name of the author shall be stated to the extent and in the manner required by proper usage. Additionally, the act stipulates a presumption for authorship where the person has attributed their name, pseudonym or signature on a work. Copyright, including the right of attribution, applies until the end of the 70th year following the author's death and in cases of collaborative works, it applies until the end of the 70th year of the last surviving author.⁷⁹

The importance of the attribution right was recently emphasized by the Swedish legislator, that the author's name acts as their trademark and where unauthorised uses of their works without prevalent attribution renders in further unauthorized uses. On the other hand, where an author's work bears its name, it guarantees due remuneration and the author's ability to evolve as an artist.⁸⁰

Additionally, the Swedish Copyright Act establishes that an author can waive their right to claim authorship.⁸¹ Principally, where the author has transferred their rights to their work, the author bears the right to be attributed as the

⁷⁸ Act (1960:729) on Copyright in Literary and Artistic Works (as amended up to Act (2018:1099) (Swedish Copyright Act).

⁷⁹ Swedish Copyright Act, 3 § 1st sub para.; 7 §; 43 §.

⁸⁰ SOU 2024:4 Inskränkningarna i upphovsrätten, 117.

⁸¹ Swedish Copyright Act, 3 § 3rd sub para.

author regardless of what is stipulated by the agreement. A waiver of the attribution right is limited to the nature and scope of the usage.⁸²

4.2.2 The Material Scope of the Right

As an initial remark, an author has the interest of being attributed to their work regardless of the situations in which it is utilized – including lawful and unlawful uses.⁸³ At the time of the act's enactment, it was argued that it is not feasible to stipulate the provision in the negative as in to legislate the instances when the attribution is not required. The right of attribution is on the other hand governed by the manner required by 'proper usage', intending at promoting and sanction warranted and unwarranted customs within the field. The judicial authorities have the authority, with the support of statements from expert institutions, to guide legal practice and prevent the emergence of undesirable customs. It is implied by the provision that the question of how and to what extent the author is to be credited is answered based on what proper usage requires.⁸⁴ For individuals, who might be uncertain whether they should attribute a work to the author in view of proper usage, in cases of doubt the general rule is to attribute the author. When the work is initially published or communicated to the public it is up to the author to decide the form of attribution.⁸⁵

The Supreme Court has held that the right of attribution is connected to the author and creator of the work and cannot be transferred, and, as stipulated by the Act, only waived in certain instances.⁸⁶ In view of proper usage it was affirmed in the preparatory works that the scope is determined by the judicature. The Supreme Court argued that the Swedish Copyright Act is based on the principle that it is significant to protect intellectual creations and, consequently, authors' rights to their works, including the right of attribution. The right is not of mere idealistic nature but also within the author's economic interests, as the attribution of their name is a significant factor in upholding their reputation. Since the introduction of the Act, developments in both legislation and case law have moved towards strengthening the protection afforded to authors. Nonetheless, where no customary rules have been developed between the parties, one needs to look at the agreement for guidance regarding proper usage. In the event of an insignificant deviation of a contractual obligation regarding attribution, no violation is present.⁸⁷

⁸² Prop. 1960:17, 66-67.

⁸³ NJA II 1961 s 1, *Upphovsrätt till litterära och konstnärliga verk. Rätt till fotografisk bild*, 59.

⁸⁴ Prop. 1960 nr 17, till riksdagen med förslag till lag om upphovsrätt till litterära och konstnärliga verk, m.m.; given Stockholms slott den 27 november 1959, 64-65.

⁸⁵ NJA II 1961 s 1, 60-61.

⁸⁶ Case NJA 2012 s 483, 496.

⁸⁷ Cases NJA 1996 s 354, 363; Högsta domstolens dom, Mål nr T 5449-23, 28 februari 2025, 49.

For a composer of a poem, the Supreme Court acknowledged that it is important for a composer to have their name credited when their work is performed in a cultural programme. The attribution could have been provided in several different ways, such as verbally during the introduction of the programme or via a caption on the screen during the broadcast of the work. As well as the form of attribution could have been decided in advance, and it was unlikely that any technical or other programme related reasons could have prevented the name from being credited.⁸⁸

Additionally, the Supreme Court has ruled that the right of attribution is also applicable in the negative. Regarding, architectural drawings, and where the author's name and stamp had been removed and replaced by a company's, the Court considered it a violation of the right of attribution.⁸⁹ The outcome was similar for photographs which were cropped and in turn had removed the author's name without a replacement.⁹⁰ Where an author opposes attribution and where no such attribution is done in illicit cases of making the work available to the public, the Patent and Market Court of Appeal concluded that no violation of the right was prevalent.⁹¹

There are some instances when the right of attribution does not need to be upheld. Regarding the nature of the communication of the work, it can be argued that it is not in the interest of the author to be attributed, and the right does not need to be afforded. Proper usage further entails situations where the author is not required to be attributed, such as authors' texts or images in brochures and advertising materials. Attribution of collective works is further limited to authors who have primarily contributed to the work. In some instances, attribution can be disruptive or not technically feasible, and the right should therefore not be upheld.⁹² In addition to that, where there is no proper usage for naming an author, there is no requirement for upholding the right of attribution, as in the case where a news article was transferred to another news agency without the initial author's name.⁹³

4.2.3 Similar Works and Attributive Marks

The Swedish Copyright Act has two provisions which extend beyond the prevailing temporal scope of 70 years after the author's death, one of which regarding cultural interests and the other concerning similar works or signatures.

A literary or artistic work may not be made available to the public under such title, pseudonym or signature that the work or its author may be easily confused with a work which has previously been made available to the public

⁸⁸ Case NJA 1996 s 354, 364.

⁸⁹ Case NJA 1993 s 263, 271.

⁹⁰ Case NJA 1974 s 94, 98; NJA II 1961 s 1, 61.

⁹¹ Case PMÖD 2020:29.

⁹² NJA II 1961 s 1, 60.

⁹³ Case NJA 1993 s 390, 400-401.

or with its author.⁹⁴ It was emphasized by the Supreme Court, regarding a similar title, that the determining factor is whether the public confuses the work with the other. Confusion could arise between individualisation measures, not only if the works are entirely identical, as well as, if the works bear resemblance in their main features or in some characteristic aspect. It is left to case law to determine, in light of each individual case, whether distinctive features could easily be confused, taking into account circumstances other than the appearance of the means of individualisation. Whether the initial work is to be protected in relation to the latter, further circumstances that are to be regarded in view of confusion is to what extent the first work is known by the public, whether the new work is of the same nature as the previous or if the work is utilised by the same or different technology.⁹⁵

4.3 France

4.3.1 The French Intellectual Property Code

The moral rights in France are attached to the author of the work and only exists as long as the work does and cannot be alienated. They derive solely from the application of legal and jurisprudential criteria and cannot be created by contract.⁹⁶ The French Intellectual Property Code stipulates that it is an author of a work of the mind, through their creation, who enjoys an exclusive and enforceable immaterial right of that work. Such right includes intellectual and moral properties.⁹⁷

Under the French Intellectual Property Code, the right of attribution is stipulated as in that the author is entitled to respect for his name, his status and his work. The right is personal to the author and perpetual, inalienable, and irrevocable. Additionally, the right passes to the author's heirs upon their death and the exercise of the right may be conferred on a third party by testamentary disposition. Similarly to Swedish law, there is a presumption for authorship for works which attribute the said person's name when it is published.⁹⁸

4.3.2 The Material Scope of the Right

As an initial point, it is immaterial whether the work or the author originates outside of France. In France no harm may be done to the integrity of a literary

⁹⁴ Swedish Copyright Act, 50 §.

⁹⁵ Case NJA 1974 s. 403, 410.

⁹⁶ Patrick Tafforeau and Cédric Monnerie, *Droit de la propriété intellectuelle* (4th edn, Gualino éditeur, Lextenso éditions, 2015), 121-122 (translated with Google Translate)

⁹⁷ Code de la propriété intellectuelle (consolidated version as of March 13, 2025) (French Intellectual Property Code), art L. 111-1, 1-2 subparagraph (translated with DeepL).

⁹⁸ French Intellectual Property Code, art L. 121-1; art L. 113-1 (translated with DeepL).

or artistic work, and the creator is by that fact alone vested with the moral rights established for their benefit which are mandatory law.⁹⁹

The right of attribution consists of two rights – respect for the author’s name and respect for their authorship. Regarding the right to respect for their name, it entails in essence that the author is entitled to have their work clearly attributed to them or in association with it. In association can for instance constitute that the author is orally named in a radio transmission of their work or when the work is advertised. In view of the right to respect for their authorship, the scope is encompassed by diverging opinions. It has however been argued that the predominant interpretation entails that the author has a right to have their titles and academic qualifications mentioned in association with the work and to be known as the author rather than a participant of the work’s production as well as the sole author and not co-author in applicable cases.¹⁰⁰

An author of a work of the mind, which is protected by copyright, is entitled to claim the right to have their name and status recognized in relation to that work, which are attributes of the author’s moral rights. The *Cour de cassation* emphasized that it is not for an author to demonstrate their role in the creation of a work where a third party claims co-authorship, and in turn the right of attribution. Neither is the author obliged to provide proof of absence of a co-authorship, and it is on the contrary, the person who claims co-authorship to provide evidence that they participated in the creative contribution of the work. In absence of such evidence, the author who initially claimed authorship is to be regarded as such. It has furthermore been affirmed that an author of a pre-existing work, which is incorporated into a new work, is entitled to have their name and status recognized on an equal footing with the new work. Where such author is attributed alongside the author of the new work, it is not an infringement of the author’s right of attribution in view of the new work.¹⁰¹

In light of the right’s inalienable character, an author who has authorized an assignee to exploit their work and to not mention their name on the items reproducing the work, does not entail a transfer of their right of attribution, since the author had retained the right to demand attribution. Such authorization, of not including the author’s name and that the products were marketed under the acquirer’s name, was not definitive since the author had retained the right to demand at any time their name being mentioned. It was neither a waiver nor an alienation of the right of attribution and the clause was

⁹⁹ Case Cass 1^{re} civ., 28 mai 1991, 89-19.522 89-19.725, Publié au bulletin (translated with DeepL).

¹⁰⁰ Elizabeth Adeney, *THE MORAL RIGHTS OF AUTHORS AND PERFORMERS: An International and Comparative Analysis* (1 edn., Oxford University Press, 2006), 179-180.

¹⁰¹ Case Cass 1^{re} civ., 19 févr. 2014, 12-17.935 et 12-19.714, Inédit (translated with DeepL).

therefore valid.¹⁰² In similar situations, where the author has granted ‘all the rights of the work’ in advertising, it was affirmed that advertisement of works are special situations, in that authors are seldom attributed even though the attribution right requires it. A use of a work without attribution requires the author’s special authorisation and when that is not done an infringement of the attribution right is present.¹⁰³ Due to the right’s inalienability, it further implies that an author cannot renounce their right of attribution and authorize another person to be mentioned instead of the author.¹⁰⁴

For collaborative works, it is stipulated that it is jointly the property of the co-authors. The co-authors must exercise their rights by mutual agreement and when that cannot be done, the matter is to be decided by the courts. Regarding contributions of co-authors relating to different genres, each may, unless otherwise agreed, exploit their personal contribution separately without prejudicing the exploitation of the joint work.¹⁰⁵ It was emphasized by the *Cour de cassation* that a co-author who seeks to act alone to defend their moral rights, it is conditioned upon that the contribution of the said author can be individualised.¹⁰⁶

Furthermore, unless proven otherwise, a collective work is the property of the natural or legal person under whose name it is published.¹⁰⁷ Previously, it was unclear to what extent moral rights were applicable in cases of collective works, especially regarding legal entities. The notion was that a co-author’s moral rights diminished inter-partes in the creation of the work, but remained against third parties. The *Cour de cassation* later ruled that the right of attribution is extinguished in collaborative works against third parties, unless the author’s part is identifiable. Whether the right lies on the creator or the promoter of the work, was in turn emphasized by distinguishing between ‘creator’ and ‘author’ in regard to legal entities. A legal entity cannot be the creator as that is physically impossible, but it can be the author in that it is vested with the rights of an authorial work. Moral rights, including the right of attribution, are personal rights and legal entities can be holders of such rights. Where the creator has created a work for the promoter and are guided by the legal entity’s brand image, tradition and spirit it embodies, the finalised work is rather a reflection of the promoter than the creator. Regarding the

¹⁰² Case Cass 1^{re} civ., 13 févr. 2007, 05-12.016; Case comment by Marie-Christine Rouault (2007) JCP G IV 1580 (translated with Google Translate).

¹⁰³ Case Paris, 4^e ch. A, 6 mars 1991; Case comment by Théo Hassler (1992) Recueil Dalloz Sirey 77 (translated with Google Translate).

¹⁰⁴ Case Cass 1^{re} civ., 4 avril 1991, 89-15.637, Publié au bulletin (translated with DeepL).

¹⁰⁵ French Intellectual Property Code, art L. 113-3 (translated with DeepL).

¹⁰⁶ Case Cass 1^{re} civ., 21 mars 2018, 17-14.728, Publié au bulletin (translated with DeepL).

¹⁰⁷ French Intellectual Property Code, art L. 113-5 (translated with DeepL).

concept of author and creator, the former refers to the holder of copyright, regardless of being the creator of the work.¹⁰⁸

4.3.3 Right to Prohibit

There has been a trend for the French jurisprudence to apply the right in the negative – prohibiting that an author’s name incorrectly or misleadingly appears on a work authored by another. It has been ruled that an author can object that their name is mentioned on works which are not theirs, due to the fact that they can demand their name on a work it also allows them to prohibit such. A violation of the right of attribution, in light of the author’s name and their artistic identity, was prevalent when an author’s signature was placed on a plaster of a work which was not theirs.¹⁰⁹ Additionally, it also entails a right to prohibit third parties from affixing their name on another author’s work. Such actions are considered as copyright infringements which in turn violates the author’s attribution right.¹¹⁰

On the contrary, where copying of the author’s signature, in cases of lawful reproductions, there is no violation of the right of attribution if there is no risk of confusion whether it is the author’s original work. The first instance had ruled on the contrary, with similar arguments as the above mentioned – that the copying of the author’s signature was infringing the author’s artistic identity. However, the *Cour de cassation* ruled that it was not an infringement, emphasizing that there was no risk of confusion since the reproduction was affixed with the word ‘copy’. By the *Cour de cassation*’s ruling, it has been held that there is a confusion-criterion whether a copying of an author’s signature is violation of the right of attribution.¹¹¹

4.4 The Swedish and French Right of Attribution

4.4.1 Attribution Signalling Authorship

In both jurisdiction the right of attribution has presumptive effects on attributed works. Works which are attributed with an author’s name or signature are presumed to be the author of that work. Initially, that signals who the creator of the work is and whether it is human made. Whether the French right of attribution can be extended in its exercise for other purposes other than the author’s interest is debated. For example, whether the right can be used for cultural or consumer protection to achieve commercial goals. The opinion seems to be that such actions are impermissible, even though the

¹⁰⁸ Case Cass 1^{re} civ., 22 mars 2012 11-10.132; Case comment by Arnaud Latil (2012) *Recueil Dalloz* 1246-1249 (translated with Google Translate).

¹⁰⁹ Gillian Davies and Kevin Garnett QC, *MORAL RIGHTS* (Thomson Reuters (Legal) Limited, 2010), 372-373.

¹¹⁰ Tafforeau and Monnerie (n 95), 131 (translated with Google Translate).

¹¹¹ Case Cass crim., 11 juin 1997, 96-80.388; Case comment by Claude Colombet (1998) *Recueil Dalloz* 192 (translated with Google Translate).

consequences can nevertheless be commercial.¹¹² Meaning that the attribution right under French law cannot be utilised in order for the audience to attain human verification of a work, the effects will however be such when the individual author invokes their right. In view of collective works, French and Swedish law stipulate that the general rule is that each author holds copyright and they are to act jointly. In view of moral rights however, there is a discrepancy. According to Swedish law, each individual author can act alone regarding their moral rights due to the personal nature of the rights.¹¹³ In France, however a co-author can only act on its moral rights if their contributions can be individualised, otherwise the rule of acting jointly applies.

France further differentiates between a creator and an author of a work regarding the right of attribution. Where no such differentiation is apparent in Sweden. The Swedish Copyright Act also stipulates that the creator of an authorial work retains copyright to such, including the economic and moral rights. An interpretation, similarly to the French judicature, has however not been subjected to in Swedish case law. Nevertheless, since only a creator can be an individual, and as stipulated by the Swedish Act, they are the holder of the moral rights, the perception is that the creator alone is the right holder. Such interpretation is also strengthened by the Swedish Court's affirmation that the author of work, as the creator, is personally and spiritually invested in their work which renders in the special relationship, which the moral rights signify.

The fact that the French legal system recognizes that a legal entity can be the holder of moral rights does not impede the audience in ascertaining whether media is human made. As the *Cour de cassation* emphasized, the creation of the work can only lie on the individual and since the right is connected to the work, it will signify that the work was made by a human. Nevertheless, someone who seeks to ensure that a work is human made on the basis of economic supporting an individual rather than a corporation, the French differentiation between an author and creator will put the audience in a place of uncertainty. A legal entity can only hold the moral rights in the case where the creator has been constrained by that entity's brand image and directions, rendering in that the entity is in fact the author and, interpreted as, that the creator's 'free and creative choices' are governed by that entity's characteristics. That will in turn have further complications for persons seeking to only engage with content where the right holder is an individual and not a legal entity. In Sweden however, legal entities cannot be holders of moral rights.¹¹⁴

¹¹² Adeney (n 99), 169-170.

¹¹³ NJA II 1961 s 1, 87.

¹¹⁴ Henry Olsson and Jan Rosén, *Upphovsrättslagstiftningen – En kommentar* (Digital version, 5th edn, Norstedts Juridik AB 2023), comment on 1 ch. 3 §.

The French right of attribution can furthermore be viewed as a twofold right, meaning that the an author's name is not only to be attributed, but also in the correct form regarding their titles and academic qualifications as well as an author rather than a participant. In Swedish law there is no specific provision regarding respect for authorship. The respect for authorship, can nonetheless constitute a valuable tool in ascertaining human works – where it renders in the availability for the audience to deduce who and to what extent someone has participated in a work and in turn further facilitating distinguishment. The respect for authorship also has its impacts on collective works, in that authors have the right to be attributed as co-authors and not merely participants or likewise.

4.4.2 Warranted Attribution

The right of attribution in Sweden and France was stipulated during a time where digital content was not prevalent and the extent of how attribution is to be done is determined differently under the two jurisdictions.

In observance of Swedish law, the determining criteria is what proper usage requires within the relevant sector of the work. In France it is rather governed by the copyright protection as such – if it is an authorial work the author has the right of attribution under the conditions that work exists. According to Swedish law there are some situations where attribution is not required, and in turn, cannot be invoked by the author. For example where a work is used in advertisement or where attribution is not a part of the customs within that sector. Regarding France, the right of attribution is to be respected in view of advertisement, where it has [on the contrary] been reiterated that even though it seldom happens within that sector, the author retains their attribution right, emphasising the author's disadvantageous standing. Here lies a significant difference.

According to Swedish law the outcome would have most likely been the opposite, since attribution is not part of proper usage within that sector, the author cannot invoke the right. The French perspective is, regardless of the fact that it is not part of standard practice, the author retains their right of attribution. Whether there are any customs for attributing works pertaining to digital content will be the determining factor regarding the Swedish attribution right, but not for France. Additionally, under Swedish law, where attribution can be considered disruptive, not technically feasible or not in the interest of the author, there is no requirement for upholding the right of attribution. However it needs to be emphasized that where there is an uncertainty whether attribution is required, the Swedish rule is that the work is to be attributed, on the basis of that it is in the author's interest. How that

coexist with the circumstances that it is not in the interest of the author to be attributed is however uncertain. It must nonetheless be interpreted on the contrary, taking into account personal nature of the right, that it is at first hand in the author's interest to be attributed unless the circumstances argue the opposite.

4.4.3 Removal of Authorship

According to both Swedish and French law, the removal of an author's attributive mark is a violation of their right of attribution. Irrespective of the two jurisdiction where digital content is uploaded and attributed, the removal of such attribution would violate the author's right. As previously demonstrated, the French attribution right applies regardless of the sector, whereas in Sweden it depends on what proper usage entails. Seemingly, the requirement of proper usage does not pose problems where the author has initially attributed their work, as emphasized in the legislative history,¹¹⁵ that the author can decide what way attribution is to be done the first time the work is made available to the public. A removal of such would constitute a copyright infringement similarly to France. However, where a transfer of the work has taken place and the author's attributive mark is not accompanied in situations where there is no proper usage for attribution, there is no violation of the right of attribution according to Swedish law.¹¹⁶ Whether works which are transferred to AI systems that in turn remove attribution or embed the work with AI markings, in turn obstructing the author's attribution, needs to be further analysed.

It was emphasized by the Supreme Court that the removal and replacing of an author's signature on architectural drawings was a violation of the attribution right. On the other hand, where proper usage does not require attribution, the author cannot require it by the third party. Multiple factors are relevant here. Regarding the architectural drawings, it was initially the author who had attributed their own work which they transferred to a company, which later removed and replaced the author's signature. In light of the other case where no violation was present, it was a company who had transferred the work to another company, where there was a collective agreement stipulating that the author retains their copyright. One of the reasons as to the discrepancies in the outcomes, might be who the transferor was.

As for the first case, the transferor was the author and in the other case it was the company, and not the author themselves. It can be argued that where the transferor is the author, they have greater control in deciding what proper usage might entail in that specific situation and in turn a larger leeway to stipulate the conditions for the transfer, in turn conditioning attribution. In the other case, the author was not a subject to the transfer. Even though the author retained their copyright, as iterated by the Supreme Court, the company is the

¹¹⁵ See Chapter 4.2.1.

¹¹⁶ See Chapter 4.2.2.

transferor and through that transfer retains the financial control over the material. The author is in that case not a party in the transfer of the work and the outcome would have most likely been different if that was the case.

On the other hand, it can be argued that the interest in upholding the author's moral rights is greater in those circumstances as it is inherent in the author's interest to be attributed in situations they lack a significant control of their work. If the case was under the French jurisprudence that might have been the consequence, taking into account the reasonings in the advertisement case. As for AI markings obstructing the author's attribution, it will depend on what way it is done. If the author themselves has transferred their work to a third party which marks it as an AI, a violation will be present in both jurisdiction. In the case where the author has transferred their work to a platform, and the platform transfers it to another actor which obstructs the attribution, in France it will most likely be a violation and in Sweden it can only be viewed as such under the condition that proper usage requires the platform and the other party to respect the right of attribution.

4.4.4 Temporal Scope

In France, the right of attribution is perpetual, meaning that its duration extends beyond the economic rights¹¹⁷ and exists as long as the work does. In Sweden it is at least the same as the economic rights, governed by the author's lifetime rather than the duration of the work, except for certain instances. The temporal scope of the Swedish attribution right and its implications for signaling that the work is authorial to the audience, might not initially have an impact. However where works continue to circulate the internet, which surpass the author's lifetime, in France as well as Sweden, the author's heirs can uphold the moral rights. Where 70 years have passed the economic rights are extinguished in both jurisdictions, where on the contrary, only in France will the moral rights continue.

What the impacts for the right of attribution might be is difficult to examine due to the rapid nature of digitization, as in a work might initially be uploaded to platforms that we know of today which might not be prevalent in the future. The perpetual nature of the right nonetheless signifies moral right's special position under French intellectual property law. The temporal scope can however be argued to have an effect in view of attributing media as human. Keeping in mind the fast pace of digitization and the constant flow of media, authorial works can be uploaded and surpass the duration time for the Swedish moral rights, entailing that the right holders will not be able to enforce attribution, rendering in the difficulty of ascertaining whether it is a human work. For instance a work that was once attributed, the right of attribution does not need to be upheld when it has exceeded the duration time, leaving the audience in a place of uncertainty in view of the works origin.

¹¹⁷ Nicolas Binctin, 'Le droit moral en France' [2013] 25(1) *Les Cahiers de propriété intellectuelle*, 316-317 (translated with DeepL).

Where in France that is of insignificance, in that if a work was initially attributed, that attributive mark is to be respected as long as the work exists.

However, a work created in Sweden does not necessarily mean that it will be governed by Swedish law. If the dispute about attribution falls within the French jurisprudence, as reiterated by the *Cour de cassation*, any work which is within France, enjoys the same protection as for French works¹¹⁸. In that case, since the French attribution right is perpetual, the audience can affix themselves whether it is a human work or not. It needs to be noted however that the audience cannot enforce moral rights, and that right lies solely on the right holder. However, as previously emphasized¹¹⁹ enforcing moral rights in the digital landscape is not an easy task. Since the perspective is limited to the EU however, the Rome II Regulation might aid in answering the question of applicable law, it can either way be a rather difficult task to determine the territorial effects of damage regarding violations of moral rights in the digital space.¹²⁰ For example, how does one determine a digital work to be within the territory of a specific country? Any further discussion about enforcement is nevertheless outside of the thesis scope, nonetheless it emphasizes another layer of the issues relating to the fragmentation of the moral rights – depending on applicable law, it will affect whether the right of attribution is enforceable.

Nevertheless, the Swedish Copyright Act has two provisions which extend beyond the usual temporal scope of 70 years after the author's death, one of which regarding cultural interests, prohibiting literary or artistic works which are performed or reproduced in a manner which violates cultural interests. It is however only applicable to grave instances from a general cultural point of view, and is more related to the right of integrity rather than the right of attribution. Due to the thesis' limitations, that provision will not be further analysed but it can be questioned whether the detriment effects on culture of AI generated media, as emphasized by UNESCO¹²¹, can be evaluated in the application of the provision?¹²²

4.4.5 Confusion as a Criterion

The other provision where the Swedish right of attribution is applicable after the initial duration time of 70 years after the author's death¹²³ is when an attributive mark on another work is similar to an another author in a way that it can be confused with that author. France has had similar cases relating to

¹¹⁸ See Chapter 4.3.2.

¹¹⁹ See Chapter 3.5.

¹²⁰ See REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), art 4.

¹²¹ See Chapter 2.2.

¹²² Swedish Copyright Act, 51 §; Prop. 1960 nr 17, 275.

¹²³ See Anders Olin, *Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk*, 6 kap. 50 § (Karnov 2025-05-15).

the copying of an author's signature, where a similar confusion criteria is stipulated, that it is prohibited to attribute works to another author incorrectly or misleadingly. In both jurisdiction, the criteria of confusion is done in relation to a previous work in instances a new work arises which is similar to that work. For the French case, it was a reproduction of a work, where the author's signature had been copied on the reproductions. Initially, it can be argued that the risk of confusion is much greater for reproductions, as the work is identical to the original, exacerbating the risks of being mistaken as the author's original.

Regarding AI works being affixed with another author's signature or attribution, the question of whether that might violate the right of attribution will most likely differ in the two jurisdiction. Regarding the Swedish provision, the Supreme Court affirmed that there are multiple factors which need to be evaluated in regard to whether a confusion can be at hand, where on the other hand, the *Cour de cassation* simply emphasized that there was no risk of confusion since the work had been affixed with the wording "copy". The two cases are however different, as in that the Swedish case was about a title of the work and the French about an author's signature. Regardless, the Swedish provision also encompasses authors' attributive marks and it can be questioned whether the outcome would have been similar to the French if it was a question about copying a signature and not the title.

Nevertheless, both Sweden and French do the examination of confusion in view of the perceiver of the work and not the author's perception. Where in both jurisdictions, other questions regarding the right of attribution is related to the personal nature of the right, in that the author has the right and interest to attribute their work. In this instance, whether the author can object to their signature or their work being similar to other's, Sweden and France evaluate whether the audience is at risk to confuse it with the author.

According to Swedish and French law, an author has a right to prohibit their name appearing another work. Implying that the attributive mark on works are the actual author's. The effects of such provisions is that the audience can be certain that the names appearing on works are the actual authors. It also needs to be affirmed that the negative right also reinforces the effectiveness of the presumption rule for authorship in view of attributed works. The implications in view of AI generated media can be of significance for attributing human works, meaning that AI generated media cannot copy an author's signature, and in the event that is done, the author can prohibit such. For instance, where unmarked AI media circulates platforms, such as deployer's AI generated media which are not deepfakes, can for instance attribute their work to an author in order to signal it is a human work. In those situations, the right holders can inhibit such uses of their attributive mark.

Whether the confusion criterion can be applied in the negative, as in unattributed or anonymous works are confused as AI works due to AI markings, is significant in determining the human verification effects of the right of attribution. The criteria will however most likely not be applicable. Both of the provisions relate to a copy or near identical signature of another author's. Media which is marked as AI, is firstly not a signature within the meaning of intellectual property law as in AI media is not protected by copyright. Additionally AI markings on anonymous works are most likely not confused with another author. Wrongful AI markings might very well confuse the audience that the work is AI generated, but the marking cannot in itself constitute confusion in that it is another author's work.

5 Conclusion – The Right of Attribution Verifying Human Works

The adversarial impacts of AI media affect the audience, individual creators as well as society. Whereas the audience is impacted by the hardship of distinguishing human works from AI generated media as well as their content consumption being negatively affected. Furthermore, AI generated media risks that cultural expressions becomes homogenous, inaccurate and inauthentic. For the creative sector, their job market is compromised, in that it is becoming redundant due to its core functions being replaced by AI. Whether the AI Act's obligations on verifying that media is AI generated can inhibit those risk is questionable.

The AI Act does not have any obligations related to the accuracy of cultural expressions, but only that media is to be marked as AI generated, in turn leaving the audience to determine whether they want to consume the media or not. Studies have on the contrary concluded that labelling media as AI generated does not to curb the persuasive nature of AI generated media. If inauthentic cultural expressions can be encompassed by that finding is uncertain, but conclusions can nevertheless be drawn in analogy. The fact that the attainments of enabling the audience to make informed choices on their media consumption can therefore be challenged.

Another issue is that the AI Act leaves room for unmarked AI generated content to circulate the digital landscape. In order for distinguishing to be effective, all media needs to be marked. In other circumstances, the audiences' uncertainty will be further exacerbated in the situations where some AI generated media is marked and others are not. For instance, deployers are free to not disclose their AI generated media when it is does not constitute a deepfake or when it is generated in their personal activity. In instances where media constitutes a deepfake, the disclosure is limited by the deployer's artistic freedoms so it does not impede the enjoyment of the content. What such limitation might entail practically is uncertain, but it can be considered that it will be less detectable compared to other AI markings, pertaining to discrepancies in the AI markings, placing the audience in further ambiguity.

The providers' marking obligations will nevertheless encompass deployers' unmarked content, in turn filling that gap of unmarked media. It is however a question to what extent such markings are initially visible to the audience. Where other technological measures need to be utilised in order to detect providers' markings, the effectiveness of signalling that content is AI generated is most likely scrutinized. In other instances, where it is clearly distinguishable, the audience can effectively determine that it is AI. Bearing

in mind, that watermarkings can be removed by third parties, will however place the audience in a position of uncertainty of the media's origin.

The pertaining obligations under the AI Act cannot alone curb the uncertainty whether something is human created or AI, which renders in that the transparency obligations' effectiveness can be questioned. Momentarily, the question cannot be given its accurate answer in that the obligations are yet to be applicable and in light of the amendments of the AI act. As of now however, the obligations and their effectiveness in distinguishing are ineffective.

The lack of harmonisation measures of moral rights, including the right of attribution, is based on the argument that it has little, to no effect, on the functioning of the internal market. The opposite is however concluded, and where the EU has previously sought to harmonise copyright's economic rights in view of free movement, it has failed to consider that copyright is by fact encompassed by both economic and moral rights. There cannot be free movement of copyrighted works where only one aspect is harmonised. Whether the author can enforce their right of attribution will in turn depend on what jurisdiction the dispute is at hand. Where the internal market seeks to establish free movement of goods, services, persons and capital, the discrepancy in law within the borders of EU inhibits such attainments. An author seeking to enforce their copyright and evolve as an artist within the Union will have to ascertain themselves of the pertaining legal rules regarding the right of attribution in each Member State.

Arguably, the EU has however legislated some moral right protection. For example the Enforcement Directive establishing a presumption rule for attributed and the obligation of attributing works where the exclusive right's limited under the InfoSoc Directive and the CDSM. Those provisions are however minimal in their harmonising effects, as in, each Member State can chose whether to include those exceptions. It is therefore no certainty whether the exceptions are applicable in all EU Member States. Furthermore, it is left to the Member State to legislate in what way attribution is to be done as long as it in the usual manner. Where the other provisions regarding the exceptions have been subjected to the CJEU's jurisprudence, the arguments have nonetheless been of moral rights character, in that the personal relationship between the author and their work is emphasized regarding the exceptions to their exclusive rights.

By the transparency obligations under the AI Act, the EU sought to address the difficulty in distinguishing human works. On the other hand, the legislative gaps constituting that unmarked content can circulate, the EU should legislate on the right of attribution. Not only, in order for authors to uphold their moral rights within the EU and signalling when media is human created, but also as an alternative in facilitating the distinguishing of media.

The effects can arguably be that authors can invoke their right and attribute their works EU wide, in turn aiding the audience in distinguishing human works. Regarding anonymous works, their right of attribution is applicable in the negative, in that they have the right to not disclose their authorship. In what way such right will facilitate both the authors' interest in remaining anonymous as well as distinguishing human works is uncertain. A regime where an absolute obligation for an author to attribute their works would nevertheless be in contrary with the nature of the right of attribution.

The elements of the attribution right which can be utilised in order to distinguish human works from AI generated content is firstly in relation to its applicability – the right of attribution is applicable to works being protected by copyright and can presently only arise when a creator has through their free and creative choices made a work which represents their personality. As reiterated only an individual can be a creator in view of copyright and other actors such as legal entities or AIs cannot. In turn the right of attribution, stemming from the creation of a work, indicates human involvement.

In view of proper usage, it could be argued that in a digital space where questions of media's origin is elevated due to AI, the pertaining proper usage is that information about media's origin is to be disclosed. Taking into account the obligations under the AI Act, the source requirement under the InfoSoc Directive and the CDSM as well as the presumptive effects under the Enforcement Directive. All these provisions have the attainments of signifying the origin of media, where its effects are arguably whether it is a human work. Proper usage could in turn be analysed that the pertaining customs indicate that human works are to be labelled as such. The question of proper usage should however not be applicable in this aspect, as in it can be used in the negative, rendering in the inapplicability of the right of attribution. Arguments relating to the nature of the media, or the specific industry can be construed to warrant non-attribution and in turn limit the effects of upholding human verification.

Additionally, applying the right in the negative, particularly the prohibition on copying attributive marks as well removing such, will render in an effective achievement of facilitating distinguishment. The audience can to a certain extent ascertain themselves that attributed works are an author's attribution in that copying is a violation of the right. That in turn will furthermore give the presumption rule under the Enforcement Directive greater effect. As it is a violation of the right of attribution to remove an author's attributive mark, unmarked media can initially be ascertained to not be human works. However, in view of anonymous works as well as AI generated media which is not marked, an unattributed work will not give the effect of distinguishing and the question of assertion will be rather difficult. If the work is embedded with watermarks, that in itself will affect the audience perception of the work's origin, under the condition that the

watermarks are easily identifiable to the audience. In the case where no watermarks are detectable, such as they are removed by a third party, the audience will still be uncertain whether it is human made.

As for the temporal scope in view of distinguishment, as long as the work is available the right of attribution should be applicable. Since the attainments are to facilitate distinguishing in relation to AI generated media, the right needs to be perpetual otherwise marked and unmarked media would circulate simultaneously, in turn upholding the ineffectiveness of distinguishing as reiterated in relation to AI markings. Where human works' right of attribution is extinguished after a specific time, the consequence will be that unmarked works will circulate the digital space alongside unmarked AI content. Furthermore it needs to be noted that there is no temporal constraint regarding AI markings. In turn the audience will be in a place of further uncertainty whether media is human made or not.

In order for the EU to establish a trustworthy information society, where the audience can ascertain themselves which media is created by a human and in turn more accurately represent messages it seeks to portray, harmonisation of the right of attribution is a viable option. As established above, it should be perpetual, applicable once a copyrighted work emerges as well as prohibit any copying or removal of an author's attributive mark. In view of the confusion criteria, an amendment of the AI Act could be viable, as in, AI markings are not be construed in a way that it can falsely or deceptively indicate that it is a human or authorial work, or confused or interpreted as a work of an author.

Drawing a comparative analysis of the Commission's proposed AI mark, a similar solution could be at hand for the EU in regard to copyright. Where authors in those instances can chose to mark their works with a similar marking indicating that is a copyrighted work and in turn created by a human.

Presently there are no registrations for copyrighted works and no coherent system for indicating such. Arguably that would render in a relief whether media is human created, where that marking would signal the origins of that work. It would also be in coherence with the attribution right in general. An author who seeks to attribute their work can chose to register it and in turn use the mark afforded by that registration. The system could also be construed in a way to uphold author's rights to anonymity. The marking as such would not indicate who the individual author is, and only that it is a copyrighted work. However it is questionable whether registration as such would respect anonymity, where it is probable that the author needs to indicate their name and other information in order to register their work.

The system can nonetheless be construed in a way that only the work is to be submitted and not any additional information, since attribution is done in

relation to the work. Whether such registration can ascertain that it is a human work is on the other hand doubtful. For instance, AI generated media can potentially seek registration or cases where third parties uses that mark in regard to anonymous work. Is the EUIPO, for example, obliged to have technical tools in order to examine whether a work seeking registration is human made or AI generated? What are the possible impacts of such a system, as in further administrative burden and economic consequences in the determination whether the work seeking registration is human made? It can also entail further issues on the right holder. How does one prove that they are a creator of a work when seeking registration? Guidance from case law regarding copyright protection might however give an answer to that dilemma.

In view of attaining the fundamental aspects of the right of attribution, in that it is personal to the author and only rightsholders can invoke their right, further questions arise regarding the enforcement of the right of attribution in relation to an audience seeking human verification. A regime constituting of third parties being able to attain who the creator is, is contrary to the personal nature of the right of attribution. On the other hand, how is a personal right enforced, which aims at upholding third parties' interest in ascertaining whether a work is human made? Nonetheless, if the EU seeks to protect authentic cultural expressions and ensure that creators are due remunerated while simultaneously upholding a trustworthy information society, the right of attribution can constitute a viable option as it signifies human involvement. To what extent it is to be legislated and how it is to upheld is a question for the future.

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