

# WEBSITE TEXT AND DATA MINING

## DECLARATION OF RIGHTS RESERVATION

Generative artificial intelligence (AI) has been in the public eye at least since the publication of ChatGPT in November 2022. Since then, the applications associated with generative AI services have developed rapidly and will continue to grow, especially in the field of creative works. The ability of generative AI to store, reproduce and transform copyright works of all kinds brings many opportunities for the music market, but also risks with regard to the appropriate remuneration and livelihood of authors. Numerous studies on various AI models have proven that training data can be stored in a way that enables an exact reproduction of the specific work.

As a collecting society, we see it as our task to support the development of AI applications in the creative sector by promoting the existing innovation potential on the one hand and safeguarding and protecting the interests and rights of the approximately 90,000 music creators we represent in the best possible way on the other.

AI models often use data that is protected by copyright for their training. Both the input and the output regularly involve the reproduction of pre-existing works. This right is generally assigned exclusively to the authors in accordance with Section 16 UrhG (German Act on Copyright and Related Rights). The provision on text and data mining (TDM) in Section 44b UrhG provides an exception to this for commercial use. This refers to a process in which large quantities of texts and data are analyzed, extracted and exploited in digital form, e.g. in order to obtain information by identifying patterns, trends and correlations.

According to Section 44b (3) UrhG, such an intervention is only permitted as long as the rights holder does not declare a reservation of use (so-called opt-out).

This provision implements Art. 4 para. 3 of the European DSM Directive (Directive 2019/790 EU) and is intended to enable authors to control the commercial use of their protected works. The EU legislator thus intends to ensure that rightholders can be adequately and effectively compensated for the use of their works.

## DSM-RL (DIRECTIVE 2019/790 EU)

### Article 4 Exceptions and limitations for text and data mining

(1) Member States shall provide for an exception or limitation to the rights laid down in point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, points (a) and (b) of Article 4(1) of Directive 2009/24/EC and Article 15(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject-matter made for the purposes of text and data mining.

(2) Reproductions and extractions referred to in paragraph 1 may be kept for as long as necessary for the purposes of text and data mining.

(3) The exceptions and limitations set out in paragraph 1 shall apply unless the respective rightholders have expressly reserved the works and other subject-matter referred to in paragraph 1 in an appropriate manner, such as by machine-readable means in the case of content published online.

(4) This Article is without prejudice to the application of Article 3.

## **ACT ON COPYRIGHT AND RELATED RIGHTS (COPYRIGHT ACT)**

### **§ Section 44b Text and data mining**

(1) Text and data mining is the automated analysis of individual or multiple digital or digitized works in order to obtain information, in particular about patterns, trends and correlations.

(2) Reproductions of legally accessible works for text and data mining are permitted. The reproductions shall be deleted when they are no longer required for text and data mining.

(3) Uses in accordance with paragraph 2 sentence 1 are only permitted if the rights holder has not reserved the right of use. A reservation of use for works accessible online is only effective if it is made in machine-readable form.

The extent to which commercial applications of generative AI are generally covered by Section 44b UrhG has not been conclusively clarified.

GEMA has had the authority to declare the reservation of use for its members transferred to it in the past.

**In this context, we would like to draw your attention to the fact that GEMA has already publicly declared the reservation pursuant to Section 44b (3) UrhG for uses of the works represented by GEMA on its website after the provision came into force. The reservation also covers uses outside Germany in accordance with the legal systems existing abroad.**

We would also like to point out that licensees who make works of the repertoire represented by GEMA publicly accessible are obliged to declare the reservation of rights of use in machine-readable form as part of the making available in such a way that third parties cannot use the licensed works free of charge under Section 44b UrhG.

By virtue of the above reservation of rights, the exclusive rights of our members are restored and third parties are therefore not entitled to use our repertoire for TDM and AI-based uses without consent or to make it accessible to third parties. If you intend to use protected works for text and data mining purposes, please contact GEMA. In this case, please contact [kontakt@gema.de](mailto:kontakt@gema.de).