# Kluwer Copyright Blog

## AI data mining: French music collecting society Sacem opts out (with what consequences?)

Brad Spitz (REALEX) · Thursday, January 25th, 2024

In a statement made on 12 October 2023, the French collecting society Sacem, which represents most authors/composers and publishers of music in France, announced that it is opting out of machine learning training for the works in its repertoire. Sacem explains that it is basing its opt-out from generative AI systems on Article L122-5-3 of the French Intellectual Property Code (that implements Article 4(3) of Directive (EU) 2019/790), which allows rightholders to explicitly reserve the use of their works for text and data mining, including the reproductions necessary for the use of works to train generative AI models. Sacem justifies its decision within the current context of 'the grandiose development of artificial intelligence (AI) tools'.



Image by Anja from Pixabay

In practice, the implementation of such opt-out decisions is complicated, as at the moment there is no standardised way to opt out (see Paul Keller's comments on the blog here). Sacem's statement is nevertheless already symbolically significant, given the importance of the collecting society, not only for the music market (it regroups most music publishers, authors and composers in France), but also in the field of lobbying before the French and EU institutions (along with other European collecting societies).

Sacem is not only interested in communication and lobbying: in its statement it says that from now on data mining activities by entities developing artificial intelligence tools using works in the Sacem repertoire must be subject to prior authorisation in order to ensure fair remuneration for the authors, composers and music publishers it represents. In other words, Sacem does not intend to refuse such use of the works in its repertoire: by opting out, Sacem aims at (re)creating an exclusive right so that it can negotiate licensing agreements with the major players in the field of generative AI. The statement indeed explains that 'entities that use Sacem's works to supply their

training bases and carry out data mining activities will have to request prior authorisation from Sacem and expressly negotiate the conditions of this exploitation.'

But what if certain authors or composers, members of Sacem, do not want to have their works used for data mining or AI generative activities? Will they be bound by the licences Sacem intends to negotiate with the major generative AI players? Under Sacem's regulations its members, authors and publishers alike, have to grant Sacem performance and reproduction rights for all current and future works on an exclusive basis. By stating that it is 'exercising *its* opt-out right', Sacem seems to consider that the right to oppose under Article L122-5-3 of the French IPC (Article 4(3) CDSM) has already been assigned to it by its members, simply because they accepted its by-laws and regulations. However, this interpretation is far from obvious: Sacem may well have to obtain specific authorisation from the members that are interested in such licence agreements in order to negotiate on their behalf. Failing that, it would deny individual creators (members of Sacem) the right to opt out effectively for their works or even specific works, meaning that litigation between authors on one side and Sacem and its licensees on the other side cannot be ruled out.

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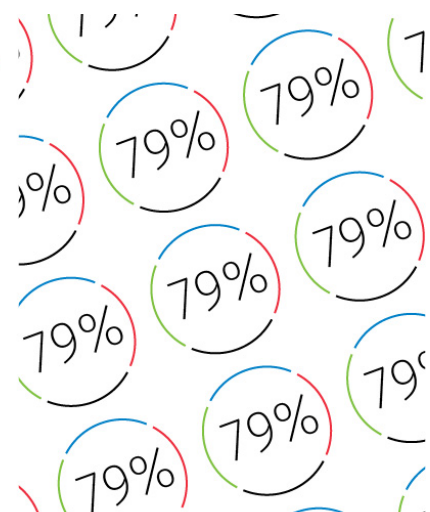
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