**WIPO CONVERSATION ON IP AND FRONTIER TECHNOLOGIES**

**PANEL 2: THE CURRENT IP STATE OF PLAY: TRAINING DATA CONTAINING COPYRIGHT-PROTECTED WORKS**

**PROTECTING IP IN THE AI WORLD IS A CONDITION TO PREVENT THE LACK OF CREATIVITY**

It is a pleasure to be with you all on this panel. I would like to salute the WIPO as an organizer institution and all the panelists.

It is interesting that we are gathered in this panel to discuss the consequences of the training data machines that depend on protected works to be learning. In theory, this shouldn’t be occurring given that works to be used in most cases always need previous authorization, and it is weird to verify how technology changed our approach to discussions in an Intellectual Property environment.

This reveals to us that the surveillance of IP protection and its principles must be constantly observed to avoid any misunderstanding of copyright and its beneficiaries: the rights holders and the creative industry. But in fact, there is no doubt that copyright is totally affected by AI issues.

At the same time, being together today forces us to recognize that we are experiencing difficult times for the copyright, eroded by many voices against IP, which try to dismiss the value of the creation.

Are rights holders and copyrights at risk? Will they survive the new AI world? Are we living in a moment of social rupture? These questions have been recurrent and the object of warm reflections.

The international institutions gathered here have as a principle the defense of artistic works and the creator as a commitment to human rights, to implement policies and rules that prevent the end of creativity.

For us, participants of this event, women and men committed to defending creativity and being attentive to the dignity of the human person, such principles seem to repeat the obvious, but unfortunately, in the stormy times we live in, they come being heavily fought. This is a global problem, where the achievements of human integration have been diluted in a worrying way.

Fluid times. Times that cause uncertainty, which are enhanced by new forms of communication between people, which worry and make our attention mandatory.

Our International IP Treaties taught us how to manage and guarantee works and the rights holders’ rights and have represented how we built our international creative industry. Now these principles are under attack.

We are living in a weakened environmental policy, where the impact of Artificial Intelligence is changing how human beings will live, work, and interact, with strong reflection in our social structures and democracies.

In the case of Generative Artificial Intelligence, the technique of algorithms that stimulate machine learning was achieved, making them capable of producing new content from the mining of information and data on a large scale in numerous bases that already exist in the digital field. The repeated training of the tool, fed by a gigantic volume of information, patterns, languages and images, allows the availability of new forms and information different from the original ones, which, in many cases, makes it difficult to identify the works used.

Certainly, the wave of generative AI will exclude humans from many tasks and will offer many practical benefits to daily routines.

In this sense, as a way of preserving the user, it is important to guarantee mining through safe, impartial databases, free from ideological tendencies and that are accessed without violating third-party rights, including intellectual property rights, in order to prevent misuses that reproduce discriminatory models, which could worsen the exclusion of groups already excluded from society.

In the case of the creative industry, AI can generate any type of artistic works and images by training machines with protected works, so that they become part of the consumer market, discarding the real works, and resulting in unfair punishments for creators, in addition to a huge loss to the creative industry.

The policies against IP are managed by controversial speeches and through digital platforms. The conduct of our lives through algorithms, which, according to the writer Cathy O'Neal, should be called “algorithms of mass destruction”, demand collective and global solutions that will preserve the IP structure that we know. It is not a matter of denying technology, but of seeking to understand the seriousness of the historical moment, which imposes on organized society the obligation to promote a debate on digital accountability that ensures the preservation of peoples' creations and their cultures.

To correctly size the AI legal framework, we need to have the premise that the author is the natural person and cannot be replaced by the generation of content offered through technological tools.

We have a historic obligation to rise up against this state of things. We cannot succumb to technology under the penalty of contaminating the essence of human beings and human rights. Creator rights are sister rights to cultural identity. They are rights of human nature, therefore inviolable, universal, timeless, and jus naturalistic. The support of the international community in defending IP rights is part of the international defense of the rule of law in the digital world.

To protect works and creation it is necessary to guarantee the three C - Consent, control, and compensation:

1. Consent to respect and know which works are used in AI training.
2. Control to preserve transparency, accountability, and quality of the databases, preserve moral rights, and understand the outputs.
3. Compensation to recognize the value of creation and the remuneration of creators.

To guarantee IP rights the rules must understand that:

a) Exceptions and limitations of text and data mining should be restricted and subjected to the three-step test. The exceptions should never be used for commercial training data and the noncommercial initiative should only be authorized in certain situations established by clear guidelines.

b) It is important that the rules establish the objective civil liability of companies and AI developers as a regime applicable to damages caused by artificial intelligence tools.

c) The burden of proof must always be on companies and AI developers.

I believe that we still have organizations and institutions that can make a difference. The support of the international community is strategic to prevent any attack on IP and has an obligation to announce the risks and losses that affect intellectual property. The international community needs to face this debate, as a way of restoring the fundamental sense of defending the individual, human rights, and artistic creations, avoiding the prevalence of the economic interests of technological mega-corporations, and putting intellectual property back at the forefront of the debate.