Business Software Alliance's

Response to the European Commission Call for Evidence

Review of the Copyright in the Digital Single Market Directive and Targeted Initiative for a Better Copyright Environment for European Creativity and Innovation

June 2026

The Business Software Alliance (BSA) welcomes the opportunity to respond to the European Commission's Call for Evidence on the review of the Copyright in the Digital Single Market (CDSM) Directive and the envisaged targeted legislative initiative. BSA represents the world's leading software and technology companies, and our members[1] are active across the full AI value chain – as developers of AI systems, providers of cloud and data infrastructure, and as significant users and producers of copyright-protected content.

Our response focuses on the two areas most relevant to our members: the review of the CDSM Directive, and the question of whether new legislation on AI and copyright is warranted. On both counts, we believe the existing framework is substantially adequate and that the priority should be to let it function fully before considering whether further intervention is needed. We set out our reasoning below and offer a number of questions we would encourage the Commission to address as part of its evidence-gathering process.

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[1] *BSA's members include: Adobe, Akamai, Alteryx, Amadeus, Asana, Atlassian, Autodesk, Avalara, Bentley Systems, Box, Cisco, Cloudflare, Cohere, Cohesity, Dassault Systèmes, Databricks, DocuSign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Informatica, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, PTC, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Trend Micro, TriNet, Veeam, Workday, Zendesk, and Zoom Communications Inc.*

The CDSM Directive: Completing the Assessment Before Drawing Conclusions

The Directive has not yet been fully assessed

The CDSM Directive was adopted in 2019, only became fully applicable across the EU from June 2021 and several Member States delayed transposition past then. As a result, in many jurisdictions, the practical effects of the Directive have barely had time to materialise. Conducting a review under Article 30 at this stage is legally required but we would caution against using that review as an opportunity to revisit the substantive policy choices the Directive embodies before their effects are properly understood.

The TDM exceptions (Articles 3 and 4) were the product of years of careful negotiation and represent a considered balance between creator interests and the needs of data-driven innovation. Revisiting those choices prematurely, before the evidence of their impact is available, risks generating legal uncertainty and deterring critical infrastructure investment essential to the EU's sovereignty goals without clear justification. Indeed, the Commission's own Better Regulation principles call for reviews to be grounded in evidence of actual impact rather than in anticipatory concerns.

Article 4: a provision worth protecting

BSA regards Article 4 of the CDSM Directive – the commercial TDM exception – as one of the most important provisions in the EU's digital innovation framework. It reflects a careful and deliberate legislative balance between enabling broad data analysis across the economy while at the same time allowing rightholders the ability to opt out of the exception through machine-readable rights reservations. That reasoned approach was sound when the Directive was adopted and remains sound today.

The emergence of generative AI does not alter that assessment. To the contrary, it reinforces it: the ability to train AI models on lawfully published publicly available data is increasingly central to European competitiveness, and European AI developers who face greater restrictions on data access than their counterparts in other jurisdictions will find themselves at a structural disadvantage. For this reason, the CDSM Directive's careful balance is also essential to European sovereignty. Earlier this month the Commission released its EU Tech Sovereignty Package, a critically important policy measure to reduce the EU's reliance on non-EU technology. The TDM exception promotes the sovereignty goals expressed in that package by allowing all levels of the AI stack to rely on the publicly lawfully published available data essential to the development of AI infrastructure and models inside Member States. BSA therefore urges the Commission to approach any consideration of Article 4 with considerable caution, and to resist proposals that would restrict its scope, attach new conditions to its use, or treat it as a transitional measure pending further legislation.

Where the review could add practical value: standardising the opt-out

The one area where the review could make a tangible and constructive difference is the fragmented, technically inconsistent implementation of the Article 4 opt-out mechanism. BSA members have documented concrete operational problems that the

Commission should address – not by expanding the opt-out's reach, but by making it function in a way that is effective, predictable, and workable for all parties.

The core problem is that rights reservations are currently expressed in forms that range from machine-readable technical signals to buried contractual clauses, platform-level blanket restrictions, and retroactive assertions against data pipelines that were built when no reservation was in place. This fragmentation imposes real compliance costs. Operators must monitor a constantly shifting landscape of technical signals, licence terms, and platform policies that are neither standardised nor consistently interpretable across Member States. The burden falls hardest on smaller companies and SMEs, which lack the legal and technical infrastructure to manage it. Fragmentation also weakens the opt-out for rightholders, who face an unpredictable landscape and uncertainty over whether their reservations will be honored.

Three specific problems require the Commission's attention.

First, technical discoverability should be a precondition for enforceability.

A rights reservation that cannot be detected by automated systems operating in good faith should not be enforceable against a TDM practitioner who accessed the content without being able to identify it. The current landscape, in which stakeholders express reservations in forms that are legally ambiguous or technically invisible, generates exposure without serving any legitimate rightholder interest: a reservation that cannot be found does not protect its holder, it simply creates uncertainty for everyone else.

The practical solution does not require new EU legislation or a bespoke EU standard. The Robots Exclusion Protocol (robots.txt) is today the only mechanism that is both technically mature and widely recognised as a baseline for expressing machine-readable content restrictions. It is already implemented across the web, understood by developers, and operationally deployable today. BSA urges the Commission to clarify that a rights reservation expressed through robots.txt constitutes a valid and legally sufficient reservation under Article 4, and that a reservation not expressed in a technically discoverable form at the time of access cannot be enforced against a good-faith TDM practitioner. Recognising what already works is faster, more credible, and less susceptible to regulatory capture than designing something new.

BSA acknowledges that robots.txt was not designed with AI training in mind and does not on its own provide the granularity that all parties may ultimately want. Industry is actively engaged in developing more sophisticated and interoperable controls, including through ongoing multistakeholder work at the IETF on AI preferences. The Commission should support rather than pre-empt that work: supporting robots.txt now, while recognising more granular successor mechanisms as they achieve genuine consensus and adoption, is the approach most likely to produce a stable and workable outcome.

Second, reservations must operate prospectively.

Data pipelines built on content that carried no detectable restriction at the time of access should not be retroactively exposed to claims based on reservations introduced or asserted after the fact. This is one of the most significant sources of legal uncertainty that BSA members report: the risk that a data pipeline built entirely lawfully is subsequently challenged on the basis of a later or previously undetectable reservation. A clear prospectivity rule – a safe harbour for content accessed in good faith before a machine-readable reservation was in place – would eliminate that exposure and give operators the certainty they need to invest in EU-based AI development with confidence.

Third, the interaction with the AI Act needs to be resolved.

The AI Act requires providers of general-purpose AI models to document and disclose their training data. Article 4(2) of the CDSM Directive limits the retention of copies of works to what is necessary for the TDM activity. These obligations point in different directions, and without a carve-out, operators face a genuine conflict: retain documentation to satisfy the AI Act, or delete it to comply with the Directive. A company that discloses its training data sources in compliance with the AI Act should also not, by virtue of that disclosure, be taken to have acknowledged a breach of an Article 4 opt-out. Without an explicit clarification, disclosure becomes a legal risk rather than a neutral compliance step. Moreover, the problem is not only one of ambiguity: even with such clarification, the EU remains the only major jurisdiction in which AI Act transparency obligations interact with a rightholder opt-out mechanism in a way that makes disclosure inherently legally consequential. Operators based elsewhere face no equivalent exposure. That asymmetry is itself a competitive concern that the Commission should weigh alongside the case for transparency. BSA recommends that the Commission address these conflicts through coordinated interpretive guidance covering both frameworks.

BSA would also welcome Commission action to promote convergence around a single standard for rights reservations across Member States. The variation in national implementation – including in how courts have interpreted what constitutes lawful access and what form a valid reservation must take – is incompatible with a genuine single market in data. The Commission should consider whether maximum harmonisation of the Article 4 framework, through authoritative interpretive guidance or, where necessary, legislative action, is the appropriate response.

AI and Copyright: The Case Against Premature Legislation

The existing framework already addresses the core concerns

BSA's view is that the existing EU copyright framework – the CDSM Directive, the AI Act, and the broader acquis – already provides a sufficient legal basis to address the principal challenges posed by generative AI. We recognise that these provisions are relatively new and that questions about their application will continue to arise, but that is an argument for allowing them to operate and be tested, not for supplementing them with additional legislation at this stage.

The AI Act, which entered into force in 2024, already imposes transparency obligations on providers of general-purpose AI models, including requirements to publish summaries of training data and to comply with copyright law. These obligations are not yet fully operative. Before concluding that further copyright-specific rules are needed, the Commission should complete a proper assessment of whether the AI Act's transparency regime, once implemented, addresses the information gaps that rightholders have identified.

The call for evidence notes that the existing framework "may not be sufficient" to address rightholder concerns. BSA disagrees and this framing reflects an assumption rather than a finding. The Commission has itself commissioned studies and announced a further economic assessment, which suggests that the evidence base needed to support that conclusion is not yet in place. We would encourage the Commission to allow that analytical work to reach its conclusions before forming a view on whether legislation is required.

The threshold for new legislation should be high

Copyright law operates best when it is stable and predictable. Each legislative intervention carries adjustment costs – for businesses that have structured their activities around the existing framework, for courts and regulators that must apply new rules, and for the broader innovation ecosystem that depends on legal certainty. Those costs are worth bearing when there is a clear and demonstrated need, but they are difficult to justify on the basis of concerns that have not yet been substantiated by proper evidence.

The Commission should apply a clear test before proceeding: has a specific market failure been identified that cannot be addressed through existing legal instruments or commercial negotiation? If that test cannot be met at the conclusion of the current evidence-gathering process, the appropriate response is to allow the existing framework to continue operating rather than to introduce new obligations. Announcing a legislative proposal in Q1 2027 while the supporting analytical work is still under way would risk committing to a policy direction before the facts on which it should rest are known.

The impact of any intervention extends well beyond the rightholder/AI provider relationship

The Commission has framed this initiative as a question of how to ensure that rightholders can control, license, and be remunerated for uses of their works in AI contexts, while also enabling generative AI providers to access copyright-protected content. BSA accepts that framing as far as it goes, but would note that it captures only part of the picture. The TDM framework supports data-intensive activity across virtually every sector of the European economy – from pharmaceutical research and industrial automation to financial risk modelling, climate science, and public health. Any significant restriction on data access affects not just AI developers but the full range of organisations that rely on the ability to process large volumes of information as part of their core activities. The impact assessment must therefore look beyond the rightholder/AI provider dynamic and take a genuinely cross-sectoral view of who bears the costs of intervention.

New compliance obligations also tend to bear more heavily on smaller organisations. Large incumbents with established data reserves and in-house legal capacity can absorb additional costs in ways that start-ups, SMEs, and research institutions often cannot. The Commission should be attentive to the risk that measures designed to protect creators inadvertently raise the barriers to entry in data-intensive markets, concentrating access to data among those who already hold it.

The costs of reopening Article 4 or adding new licensing conditions are not limited to model developers. Enterprise software companies that integrate AI capabilities – but do not develop or train foundation models – would face cascading compliance uncertainty. If the legal basis for AI features becomes jurisdiction-dependent, integrators must choose between building a fragmented product architecture for EU customers or withdrawing AI features from the EU market entirely. Neither outcome serves European innovation or the companies and workers who rely on these tools. Any impact assessment should account for this full downstream cost, not only the cost to model developers.

BSA notes in this context that both the Draghi report and the Commission's Competitiveness Compass identify regulatory complexity and constraints on data access as structural weaknesses in Europe's AI ecosystem. The Commission will wish to ensure that any copyright measures it considers are consistent with those broader assessments and do not add to the regulatory burden on European AI developers at a moment when reducing that burden is a stated priority.

BSA's positions on specific measures under consideration

Should the Commission proceed to develop specific measures, BSA wishes to record the following views:

- **Mandatory licensing or remuneration for AI training:** BSA does not consider a mandatory licensing or remuneration regime for AI training uses to be justified. Where Article 4 applies and no rights reservation has been made, the legislative framework has already resolved the question of access. Introducing a remuneration obligation in those circumstances would effectively rewrite the exception and create obligations that the Directive deliberately chose not to impose.
- **Transparency beyond the AI Act:** BSA would caution against transparency obligations that go materially beyond what the AI Act already requires. Disclosure requirements at the level of individual training datasets raise legitimate concerns about the protection of proprietary business information, and their benefits to rightholders should be carefully weighed against those costs before any new obligations are introduced. The AI Act transparency obligations also already go beyond comparable obligations in other jurisdictions, which may create costs and consequences on Europe's global competitive position.
- **Performer impersonation:** BSA recognises this as a legitimate and distinct concern. It engages questions of personality and image rights that sit outside the traditional copyright framework and are currently matters for Member State law. If intervention is warranted, a targeted instrument addressing those specific rights may be more appropriate than modifications to the copyright acquis.
- **Enabling voluntary licensing:** BSA is supportive of measures that make voluntary licensing easier where parties wish to transact. We would ask that any such measures be designed to facilitate voluntary agreement and reduce legal uncertainty rather than to establish de facto reference rates or create implicit pressure towards licensing in cases where Article 4 already permits use without a licence.

Questions BSA Encourages the Commission to Address

BSA welcomes the Commission's commitment to evidence-based policymaking and is supportive of a thorough analytical process. We would encourage the Commission to ensure that the following questions are addressed substantively before any conclusions are drawn:

- **Is there a demonstrated market failure, or a licensing negotiation challenge?** The Commission should distinguish between situations where rightholders are genuinely unable to license their works because no functioning mechanism exists, and situations where effective licensing mechanisms exist but negotiations have not produced terms that all parties find acceptable. These are different problems and may call for different responses, if they call for a regulatory response at all.
- **Does the AI Act transparency regime already address the information gap?** The Commission should assess whether the AI Act's transparency obligations, once fully implemented, deliver the information rightholders need to identify uses of their works and enforce their rights, before concluding that additional copyright-specific measures are necessary.
- **What are the full costs of intervention across the economy?** Any impact assessment should take a genuinely cross-sectoral view, capturing the costs that new obligations would impose on organisations beyond the copyright ecosystem – including sectors with significant data access needs but limited connection to the creative industries debate.
- **What are the consequences of intervention to the EU's tech sovereignty goals?** The Commission should assess how proposed measures would affect the EU's ability to meet its tech sovereignty goals, especially with respect to EU AI adoption and infrastructure development.
- **What is the effect on Europe's global competitive position?** The Commission should assess how proposed measures would affect the attractiveness of the EU as a location for AI research, development, and deployment, and whether they risk accelerating a shift of AI activity to jurisdictions with more permissive data access frameworks.
- **How do proposed measures affect market entry and competition?** The Commission should consider whether new compliance obligations would disproportionately burden smaller operators – start-ups, SMEs, and research institutions – relative to large incumbents, and whether they risk entrenching existing market positions in ways that are contrary to the EU's broader competition and innovation objectives.

Conclusion

BSA strongly supports a copyright framework that works fairly for creators, rightholders, and those who rely on data access for innovation. We believe the current framework, built around the CDSM Directive and complemented by the AI Act, is well-positioned to deliver that balance – provided it is given the time and space to operate.

Our central recommendation is that the Commission complete its evidence-gathering process in full before drawing conclusions about whether new legislation is needed. The review of the CDSM Directive and the accompanying evaluation, feasibility and impact assessment studies represent the right vehicle for that analysis. BSA urges the Commission to let those processes reach their conclusions before making any commitment to a legislative proposal, and to approach the question of Article 4 in particular with the caution that a foundational provision of the EU's innovation framework deserves.

BSA looks forward to engaging further in the consultation process and is happy to provide additional evidence, data, or technical input to support the Commission's work.

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