ALAI World Congress – Table 23/6/23:

Mesdames et Messieurs, chers collègues, je vous remercie de m'avoir invité à prendre la parole aujourd'hui. Je m'appelle Nina George, je me suis associée à l'ALAI Allemagne, je suis écrivaine depuis trente ans et je me trouve être la commissaire politique du European Writers Council et, depuis quelque temps, devenue sa présidente d'honneur ; je ne sais franchement pas comment cela a pu me tomber dessus à quarante-neuf ans.
J'aimerais présenter mon bref aperçu sur la transparence et la rémunération en anglais - mon français a encore des trous trop créatifs.

For those who are not yet familiar with the European Writers' Council: the Federation, founded in 1977, today comprises 49 organisations of professional writers' organisations in the book sector of all genres from 33 countries, writing in 34 languages and publishing worldwide. Constituted in Brussels, the non-profit confederation represents the interests of its 220,000 writers in the field of intellectual, economic and moral rights, as well as promoting their cultural policy needs vis-à-vis the European Parliament and the Commission, as well as institutions such as EUIPO, WIPO and UNESCO.

My intervention is structured as follows: A pre-amble to AI, followed by an overview of where automated processes are used in the book sector, to finally look at the issue of transparency from two sides: on the input - what do large language models consist of and where are the transparency and remuneration problems of the software - and the output: what regulations do we need to deal with products of generative machines.
On the way, I will have a look at the exceptions to text and data mining within the EU Directive 2019/790, as well as the two breaking points in the Ai Act proposal, which is currently in trialogue.
With a bit of luck, I'll have the last minute to save the world with three solutions.

(1) Pre-amble: Artificial intelligent is not intelligent.
Generative language, images, sound, or graphic models are often mistakenly referred to as "artificial intelligence". Basically, there is nothing intelligent about the machine production of letter ejections; neither can a writing machine from the houses of Open AI, Google, StableLM and others read itself, nor correct itself, nor does it actually understand what it is tossing out.
So-called AI cannot provide any new inventions, thoughts, or findings, it always refers to the past, it has no intrinsic motivation and - unlike the human author - assumes no responsibility for disinformation, violation of personal rights, propaganda, agitation, or reproduced bias. Apart from that, generative language automatisms already censor themselves, they avoid eros, irony, the humorous, and the list of forbidden words is now getting so long that even experienced dictators are amazed.
Accordingly, we prefer to speak of Ai as being artificial idiocy when we are in a grumpy mood, or, if we want to be specific, of generative language production or of large language models: LLM.

Beside that, what we see when we open ChatGPT – also known as CheatGPT in university circles – or similar Generative Software, is only the tip of the iceberg; out in the cold is copyright infringement, is violation of data protection and personal rights, is reproduction of bias and misinformation, are tons of carbon emissions, is the exploitation of underpaid workers who are labelling words, to help the machines learn to guess better, what word follows another; Open AI for example outsourced this work to human labellers in Africa, where—due to depressed wages and limited labor laws—it could get away with paying workers as low as $2 per hour. At the same time, the guidelines for labelling are not well-developed - and so words such as female or woman are possibly placed with adjectives such as cute, hot or annoying as the usual word double.

But why is this a side issue, why is AI so enthusiastically embraced?
It's the Tamagotchi effect.
If you have ever cared for a virtual chicken in a plastic egg, if you ever had the feeling to lose your life when your phone is not charged, if you ever have talked to your car: you are suffering from the Tamagotchi-effect, and the deep emotional attachment to a product. The term "Tamagotchi effect" refers to the

"emotional intelligence" attributed to a programme - the "better" it simulates empathy, feeling, intuition or being a real entity, it tricks your lateral prefrontal cortex into desire and trust.

(2) Automated processes in the booksector

In publishing houses, manuscripts are more and more reviewed by software for their "sales potential" instead by human editors. In online retailing the algorithm has replaced personal recommendation, this leads to increasing non-discoverability of niche topics or non-commercially oriented literature.
Keyword tools summarise book works and generate marketing texts from manuscripts, to stop burdening people with reading a book you publish; the summaries, where the tool determines the focus, become briefings for cover design, for social media marketing and for the press.
Translators are less often hired for translations; instead, post-editors are assigned to revise machine translations, which leads to a decline of fees, and by the way: not to better texts, but to fatiguee and even more hours of work – and machine translation replaces the reviewers who read foreign language texts and recommend them for translation.
In the children's book sector, self-publishing service providers like Amazon are flooded with automatically produced picture books and ChatGPT texts.
Human voices of audio book narrators are cloned and used without consent. For example, the voice of actress Emma Watson (Hermine Granger in Harry Potter) was synthetically copied and had the synthetic Ai voice read out Adolf Hitler's "Mein Kampf".

AI is used in the publishing industry to create *personalized content* tailored to individual readers' interests. These tactics are based on Data-Driven Insights of cross sectoral analysis of reader behavior and preferences, by spying on e-books readers, and tracing and tracking your intimate reading habit, by analysing your buying habits online, and by crawling through your reviews with the aim to find out, if most of the readers prefer a blond guy with beard or better the dark hair guy with green eyes.

And oh brave new world, but all of this is build on existing works, characters, voices of authors and artists. It is all possible – but is it allowed?

(3) Transparency and Input

The software and products sold by AI companies today are the result of the non-consensual and non-remunerated use of millions of copyrighted images, private photos, of texts ad books, and the work of human individuals, mined <u>out over a decade</u>. Open Ai was only founded in 2015, but development started well before that. The datasets for training of self-writing software are based on copyrighted and digitised books, but without permission or knowledge by the rightsholders.

The three corpora mostly used for learning of machine language generators, called Books1, Books2, and Books3, were also partly obtained from illegal sources, such as bit torrent piracy sites.

<u>Example One:</u> The research team of the Netherland-based Saftey AI Camp gathered a list of nearly 200.000 books in copyright used for StableLM and downloaded from illegal portals. Among them:

- 31 books by **Salman Rushdie**
- **98 by Stephen King**
- **48 by John Grisham**
- **63 different editions of Harry Potter Books**
- **48 books by the Dalai Lama**
- 2 by **Nina George.**

<u>Example Two:</u> Stanford researchers evaluated foundation model providers like OpenAI and Google for their compliance with the EU Ai Act proposal.

They assessed the compliance of 10 foundation model providers—and their flagship generative models—with 12 of the AI Act's requirements; among them the transparency about used training data, and if they comply with the requirement to summarise copyrighted data used to teach the software.

For this purpose, a point system was developed to make the results comparable. The higher the score, the cleaner the companies work.

Let's have a look into the results:

(Slide) --- Oupsie.

I quote from Stanford research: "Foundation model providers rarely disclose adequate information regarding the data …. In particular, foundation model providers generally do not comply with draft requirements to describe the use of copyrighted training data."

Now, one could say that the European text and data mining exception does allow the use of copyrighted works, especially in Article 4 of Directive EU 2019/790 on Copyright in the Digital Single Market. But firstly, this exception is not retroactive and in no way legitimise double theft from the past decade; neither the use without consent and prior to entry into force and national implementation, nor the harvesting of works via illegal piracy portals.

Moreover, if one looks at the wording of Article 4, it is highly doubtful in our view that machine learning is covered beyond the analysis of content and patterns. Even more, the Recitals say that the licence reservation must apply to everything that is not in the clear set scope of the exception.
The European Commission and the Cabinet Breton is not comfortable with this view at present, but refers to the possibility of the legally prescribed, machine-readable opt-out. Tragically, this has not existed for years: neither in the bilateral contractual field – authors cannot tick a box in their contracts to allow or reject text and data mining -, nor in the practical area. In not a single e-book in Europe has a rights reservation protocol been implemented in the meta-data of an electronic book-file to grant authors their essential right to say "no, thank you, I am not interested to feed the beast which finally kills my job".
As if that were not pretty bad enough, the milking of the intellectual mines keeps being, according to the law, also: non-compensated.

Here we see two necessary steps: either an immediate clarification of the EU TDM exception to make clear, that machine learning is out of scope and needs to be licensed; or a fundamental reform, towards a framework that respects the right of consent of authors, and provides a voluntary opt-in that, under limited conditions, allows for individual or collective licences with a right to remuneration; let's say: every second dollar out of the revenues of AI companies. Becaue without art, artists, authors: they are nothing.

Instead allowing authors' works to continue to be misused, mined, milked, without remuneration and without consent in order to produce competing products is a declaration of moral bankruptcy.

We see clear progress in the AI Act proposal in Articles 28.b(4) to make transparency of data used mandatory, and in Amendments 101 and 771.

Fundamentally, however, this does not heal the moral and monetary wound inflicted by the illegal use of the last decade; and the articles are not yet sufficiently suitable as a basis for introducing remunerated licences.

(4) Transparency and Output
You may remember my example of Emma Watson synthecially cloned AI voice, misused to read out Hitlers Mein Kampf?
Following the current AI Act proposal and the Article 52.3b, this shall be not mandatory to be labelled as an AI deep fake.
I quote: "Paragraph 3 shall not apply where the use of an AI system that generates or manipulates text, audio or visual content is authorised by law or if it is necessary for the exercise of the right to freedom of expression and the right to freedom of the arts and sciences guaranteed in the Charter of Fundamental Rights of the EU".

I must ask here: how exactly does stealing an person's voice for a fascist propaganda fall under the right to freedom of expression?
Even if the paragraph that has since been inserted is a bit wishy-washy in its demand for labelling, which should not be too disturbing, the open garden gate "freedom of expression" is precisely the trap that the courts will then deal with.

From our standpoint, a strict labelling obligation for all press, book and text works produced by means of machine output, including translations, as well as audio works, shall be introduced. It is important to ensure the traceability of products to also protect citizens who have the right to know what the quality and provenance of any product is and who is responsible for possible damages, misinformation, or hallucinations.
We support the approach of making not only the information of origins available transparent, but equally transparent when cultural and book works are curated, recommended, or selected for individual purchase by algorithms or otherwise automated systems
In addition, remuneration mechanisms of collective rights management are affected, if a labelling mechanism is not mandatory: whether METIS (the remuneration for texts on the internet, a system established in Germany with 140 Mio. Euros levies for writers and journalists!), library royalties or equipment levies for fiction or scientific works, press products and audiobooks

or dubbed translations: Only human Authors are entitled to remuneration. Collective management organisations are already having to have AI detectors developed to sort out unauthorised texts. The costs required for this are taken from the money due to authors, thus causing further damage.

And, for the sake of clarity: AI outputs should not be protected under authors' rights and copyright laws; a separate legislation inspired by Directive 96/9/EC of 11 March 1996 should be in reflexion for machine made output and products.
But: Under no circumstance a machine shall be considered as an author.

(6) Solutions, anyone?

Let's create a worldwide Terms and Conditions for dealing with AI; we will not find the elinghtment within copyright legislation alone here.

Speaking of worldwide: Art and literature is a craft without borders. We need international solutions and a crystal clear regulation, not only a voluntary approach; to ask tech companies from silicon valley nicely to please act decently on a voluntary basis, is like asking toddlers to voluntarily stop eating ice cream. Any regulation shall have three factos at heart: the consent of the author and the right to say no to bad plans – a remunerated basis of any licence – and the full transparency, who feeds the troll.

Third point: sue them. OpenAI CEO Sam Altman has issued a warning that the company might withdraw ChatGPT from the European market due to the AI regulation being developed by the EU. The reason, I quote: "the requirement for OpenAI to disclose its use of copyrighted data not only poses a potential business threat but also exposes the company to the risk of lawsuits."
Dear Sam Altman: yes, I would love to sue you.

- Thank you.