Policy Brief

Legal and Ethical Challenges for Startups and Artists

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Technology and innovation are a moving target for legislation and policy initiatives. Often described as “lagging behind”, having relevant and up to date legislation is a real challenge when it comes to technological innovation. By adapting existing frameworks or adopting new ones, the European policy making landscape takes time before providing answers. Start-ups and artists manipulating data for their projects are often confronted with many legal questions in relation to their activities. Smaller innovation actors such as startups and artists have less human and financial resources for legal compliance and legal monitoring. For them, law and compliance can rapidly become a regulatory jungle hard to navigate. This policy brief aims at explaining how MediaFutures approached the legal questions related to data and innovation, what were the legal challenges encountered by the teams and recommendations for policymakers to address these challenges.
The MediaFutures programme has put in place different components to help startups and artists with legal aspects of their work. Firstly, a training programme focusing on different areas of law relevant for the teams working with data in a media context was elaborated. Secondly, legal contributions to the data innovation toolkit were provided. The toolkit is a resource for everyone working between business and arts, it focuses on interactions between art and AI, and how they can be used to counter disinformation. Thirdly, the participants had the opportunity to require one to one legal coaching on matters relevant for them. Every coaching was different as all the teams had different and specific needs for legal guidance.

a. The trainings

Our trainings focus on the following legal topics:

**Data protection and privacy**
Startups and artists both rely heavily on data to create innovative products, services and art works. One big challen-
ge is to be aware of the EU privacy laws and regulations that govern the use of personal data protection including the General Data Protection Regulation (GDPR). The training provided the basics of personal data regulation: including the regulatory scope, the various lawful basis for processing, the GDPR principles, and a dive into the data protection impact assessment.

The data protection issues of freely accessible online data was also addressed. The training aimed to provide key tips to start with data protection compliance, useful links towards institutions (EDPB, EDPS, list of DPA's), organisations or projects focusing on GDPR (SMOOTH and its GDPR handbook).

Intellectual property rights

Intellectual property (IP) rights questions arise at different steps of the team’s project development. When manipulating data, some frequent questions that arise are whether these data or datasets are free to reuse, what are the licensing terms and how not to infringe IP rights of others. IP comes back in relation to what startups and artists develop and how they can protect their output through IP rights. In the training, we provided an overview of the different IP rights: copyright, trademark, patent, design, domain names. We also focused on creative commons and the different licensing schemes. The training also presented some tips, links and resources. This included licensed images and public domain art databases and European Union Intellectual Property Office (EUIPO) and WIPO (World Intellectual Property Organisation) initiatives for smaller structures:

- the European Commission IP helpdesk
- the EUIPO SME fund
- international mappings of IP SMES support institutions and regional IP helpdesks across the world.
- WIPO IP Diagnostics
- WIPO IPR Go manual
Freedom of expression

MediaFutures startups and artists worked on innovative solutions to media challenges including disinformation. Freedom of expression is a compound freedom and includes also the freedom of press and media pluralism. In this training we informed participants about the legislative architecture to protect this fundamental right, its scope of protection and limits thanks to case-law interpretation. The complexity of regulating disinformation and the evolution and approach of the regulatory framework to fight disinformation spread was also addressed during the training.

Artificial Intelligence (AI)

The training aimed to highlight the opportunities and risks of AI systems applications and more specifically in the media sector. The evolution of the European policy and normative framework was presented with some use case illustrations. The training also presented the AI Act proposal, the recently adopted Digital Services Act, and the impact that legislation will have on some use cases such as deepfakes and content moderation. The purpose was for startups and artists to be aware of the legal implications of using AI and machine learning (ML) algorithms in their data-driven projects. The risks and legal issues associated to generative AI was also discussed in the cohort 3 training.
Overview of AI applications in the media sector.

For all the trainings, even when participants had some prior knowledge about the training topic, the training proved to be always useful. For instance, for the training feedback, the training on GDPR proved to have significantly boosted the competency and the knowledge of the teams. It also increased their interest in legal matters.

b. The toolkit

The MediaFutures toolkit discusses the legal requirements and ethical implications of data-driven innovation in the context of MediaFutures. The legal sections in the toolkit address topics such as the GDPR and the protection of personal data, the developing AI ethical and legal landscape. The section also shed light on self-initiatives from a wide range of stakeholders and policy initiatives on AI and media. It also features resources for AI ethics both theoretical and practical. The topic of AI, freedom of expression and platform services is also addressed. The goal is to enable readers of the toolkit to be aware of the legal implications of their own innovation processes, be aware of
relevant legal frameworks that affect them, and be aware of the ethical considerations they need to make to produce responsible innovation.

c. The one to one coaching sessions

Through the 3 years of the programme, the participants had the opportunity to request one to one coaching on legal matters. From more formal meetings through team calls in the first cohorts (due to covid related travel restrictions) to more informal ones for the last cohort, teams made use of this opportunity. Participants could ask follow-up questions about the training content or specific legal questions related to their project. While not acting as a legal counsellor, KUL provided legal guidance, clarifications or examples to illustrate complex legal concepts. The aim was to share more in depth knowledge and redirect towards more specific resources or professionals. KUL’s team interacted mainly on topics related to:

- **Intellectual Property** aspects (how to choose a good trademark name, how to respect copyright in the digital single market, how to refer in compliance to newspaper articles, the role of hyperlinks, AI and IP with scraping techniques)
- **GDPR** (How to ensure informed consent, the status of facial data, user’s data in the app, anonymization and surveys, privacy in the terms of services/use of an online service)
- **Freedom of expression (FoE)** (the limits of FoE, the clash with other fundamental rights (IP, privacy), how to avoid defamation cases, artists protection when doing investigative work on disinformation).
- **AI** (question about AI and mental autonomy, the territorial scope of the forthcoming AI regulation).
- **Network** (information about potential collaboration with other projects KUL is working on).

In proportion, most of the one to one coaching sessions had to deal with IP and GDPR.
Key Findings and First Results

a. Feedbacks and insights

MediaFutures was a real collaborative process, the training was gradually adjusted and tailor-made to meet the needs of the teams thanks to the participants’ feedback. After 3 years of exchanges with the teams we also had the opportunity to collect and discuss the legal challenges they encountered. These information were gathered thanks to polls or interactions during the trainings, one to one coaching sessions, surveys, physical workshops such as in Barcelona (Feb. 2023) and Rome (April 2023) or physical informal conversation Paris DemoDay (Oct. 2022) and Hamburg Final Event (June 2023). Teams saw the interaction with KUL on legal matters as sometimes the click to react and start implementing compliance by design and changing their behaviour toward better legal compliance. They communicated that MediaFutures positively impacted the way they interact with data and design a new activity.

Beside, getting theoretical knowledge on relevant legal frameworks, what participants needed was to have concrete examples, illustrations or use cases close to their projects. They also raised interest for developing a self-assessment Caneva to further integrate the knowledge gathered in the trainings. They also needed time and space for addressing their specific questions in relation to their project such as via the one to one coaching sessions.
b. Challenges

During the above described exchanges with the participants, the following legal challenges were discussed.

General challenges

Lack of resources and knowledge
The teams being small innovation actors are suffering from low human or financial resources to ensure the full compliance with existing legislation, maximising their prospects by using the rights granted in the legislation and monitoring legislation which will affect them.

Complex landscape
Multiple EU legislations contain rights and obligations for startups and artists operating on the EU digital single market. Legislations which are often known but not fully understood.

GDPR and privacy

- They struggled to find GDPR compliant datasets to re-use.
- They fear using datasets containing unlawful personal data.
- They face difficulties to conduct research from social media because of the API restrictions, terms of use or even design.
- The GDPR is a famous instrument and is known by participants but the level of knowledge varies greatly with over 60% of the respondents to the training polls who acknowledged having unclear concepts or limited knowledge. Indeed, many of them feel confused when implementing the rules in their project and activities. The legislation has been described as complex many times and overall the general feeling towards the GDPR was an anxious one.

Intellectual Property

- They had uncertainties about the protection of copyright in the digital single market, open source, various types of licences including softwares.
- They are concerned about how to be compliant while being innovative and having access to publicly accessible data (dataset, videos, images, content). This related to the question of the data ownership and whether or not the data can be reused.
- They seem aware of what intellectual property entails but have concerns or questions on how this applies to them in practice or how they can benefit from it.
- They are unsure about how to protect the different elements from their business activities or artworks.
- The intellectual property aspects when several collaborators are involved are also a challenge.

Other

- Some teams expressed that determining under which legal structure they would operate was also a challenge (which type of company or for an artist to be a freelancer or operate as a company).
- Allocating the different responsibilities and burdens in case of collaboration is also a challenge.
- Some teams also fear to have issues by exposing disinformation communicated by companies or public figures. Issues such as personal safety or retaliation legal procedure (defamation cases).
c. Recommendations

The lack of awareness and a clear understanding of legal obligations and rights within the evolving legal landscape can act as a significant barrier to innovation, especially for smaller structures. Teams that are uncertain about their obligations and rights may be hesitant to launch projects due to fears of legal non-compliance, or they might proceed with projects without fully grasping potential legal pitfalls. Without a proper understanding of the legal framework, they could miss out on opportunities to drive innovation, face potential lawsuits, or fail to adequately protect their innovative outputs.

While the teams are generally aware of the existence of these legal instruments. They are unsure about their practical rights and obligations stemming from them and were really engaging with the legal support provided. It is therefore crucial to have legal support available for them and visible initiatives to help them to comply and activate their rights. Unfortunately, many teams remain unaware of the legal assistance offered by EU institutions, such as the IP helpdesk and funding schemes for startups, thereby missing out on valuable support.

To rectify this issue, concerted efforts must be made to disseminate legal knowledge effectively. Improving accessibility is key, and this can be achieved by providing practical examples in legislation presentations, factsheets, and clear explanations of how they can benefit from or be affected by particular legislation. The teams’ strong desire for compliance reflects their commitment to ensuring the sustainability of their projects and maximising their opportunities for success.

By enhancing awareness and accessibility of legal support and knowledge, we can empower these innovative teams, fostering a thriving environment for creative endeavours while ensuring they operate within the bounds of the law.

Needs

Enhancing Access and Awareness on Ethics, Policy, and Law:
• Having widespread campaigns on recently adopted policies, especially in relation to new tech tools. i.e. AI, VR, XR.
• Establishing a centralised online platform for smaller innovation actors, offering tailored advice and a wealth of relevant materials on law and ethics. This platform would also serve as a conduit to EU institutions responsible for producing awareness material and offering discount or support programs (EUIPO, EDPB, DPA, etc.).
• Alternatively implementing a general help desk to redirect them towards materials, resources and relevant stakeholders would be needed.
• Providing visual and interactive guidance, catering to the needs of participants who require assistance with starting, following useful processes, connecting with professionals, accessing links, utilising legal factsheets, and using checklists to consolidate their knowledge. This support would bridge the gap between theoretical legal frameworks and practical realities.
• Ensuring that all the recipients and beneficiaries of the legislation have the necessary resources to understand and digest them.
• Providing further guidance in relation to the legal aspects of datasets openly accessible to train AI and the use of generative AI.

Improving funding and revenue streams for innovation actors
• Having funding for legal compliance specifically was also put forward by MediaFutures participants.
• Enhancing funding for research and development, particularly in areas vital for the future of society and the planet, while ensuring these funding opportunities span a substantial duration.
Providing further guidance on AI and innovation

- For instance in relation to the legal aspects of datasets openly accessible to train AI and the use of generative AI.

Addressing and understanding the power dynamic behind technology and the danger of dependence to non-European technology actors and providers.

- Participants are highly concerned about the power owned by only a few tech companies in the development of AI. They call for a better understanding of the underlying problem from this data and power concentration and avoid self-regulation for this field. They are concerned that individuals are not protected enough from the abuse, misuse of technology and AI systems developed by these big economical actors.
- Providing enhanced transparency about how and by whom the standards applicable to technology and ethics guidelines are edited.

Improving the narrative when it comes to legal compliance

- There is a narrative problem in relation to law and compliance in general. Some teams managed to reverse this narrative through their artwork and project by showcasing how innovation can be properly done and how legal compliance by design should be at the centre of innovation. Celebrating the successes of teams that have effectively integrated innovation with legal compliance through their artwork and projects would emphasise the significance of designing with compliance at the heart of innovation. However, persistent obstacles remain, primarily due to the inaccessibility of the law for those who need to apply it or benefit from it.

By implementing these measures, we can create a more supportive and accessible environment for innovation, while also ensuring responsible and compliant practices within the rapidly evolving technological landscape.

d. Conclusion

MediaFutures has helped to enhance the legal compliance and awareness of the teams by offering access to legal knowledge, materials and guidance about a selection of legal topics useful for innovation in the media sector. MediaFutures has had a significant impact on legal compliance of the teams as several teams declared that the support received during MediaFutures transformed their approach to handling personal data and shaping their project or artwork activities. There was and is a strong interest by the teams to benefit from legal support. Therefore, it is essential for future innovation and art support programs to incorporate legal considerations into their frameworks. Additionally, concerted efforts should be made to disseminate this valuable knowledge to innovators through effective policy and communication initiatives.

In conclusion, MediaFutures has been instrumental in supporting teams that critically engage with data, combating disinformation, and fostering meaningful innovation. As rightly underlined by these teams, data is not without its constraints, and adhering to legal compliance can be a daunting challenge. The ethical and legal design of activities demands both time and effort, discouraging the mere reuse of open-access datasets that may contain unethical or illegal information. Recognising this need, there is a pressing requirement to provide incentives and support for these vital innovation actors. Implementing specific measures and rewards, as well as establishing robust support schemes, can go a long way in empowering such endeavours.

Innovation, art, and research remain pivotal in creating inventive solutions to societal issues and must be further nurtured and encouraged.