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Joint Submission to the Call for Input for *EMRTD Study 'Artificial Intelligence, Cultural Rights, and the Right to Development'

IT for Change and the Center for Global Digital Justice

Q5. What are the main risks posed by and drawbacks already identified of artificial intelligence (AI), including, amongst others, generative AI, to cultural rights in pursuing the right to development?

The emerging debate on AI and cultural rights tends to be framed in a limited manner, focusing primarily on two considerations:

(a) The implications of generative AI on the enjoyment of Article 15(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) i.e. "the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

The emergence of ubiquitous AI scrapers, which indiscriminately extract data from the public domain to train generative AI systems, has triggered a wave of legal contestations over the material and moral rights of content creators and performers on a hitherto unprecedented scale. Yet, according to the 2023 WIPO Global Intellectual Property Indicators, only 12% of countries have updated their copyright legislation to address issues related to AI-generated content. This tension between the technological realities of AI training and the slow evolution of the copyright regime has understandably posed widespread concern.

(b) AI bias and discrimination, particularly against minorities, which violates the protection against non-discrimination under International Covenant on Civil and Political Rights (ICCPR).

The lack of cultural diversity and sensitivity encoded in AI systems leads to discriminatory outcomes. AI systems trained in crowdsourced or open data without taking into account the cultural context can lead to entrenching dominant stereotypes, for example, identifying locations historically occupied by marginalized and minority communities as "unsafe."

The analysis of the risks of AI development to cultural rights in the current context needs a clear foregrounding of the right to development.

Article1of the Declaration on the Right to Development recognizes that, "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

Thus, the right to development recognizes that the right to cultural self-determination and the pursuit of autonomous pathways to social, economic, and political development are inextricably interlinked. Cultural self-determination, here, is not just about the right to preserve one's identity and heritage. It is also the right to actively shape one's way of life, including through choices of scientific and technological progress. Culture is therefore to be understood as '*living culture*' that presupposes people's agentic engagement in producing and reproducing their knowledge systems; It cannot be reduced to a static, objectified, and utilitarian view.

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We, therefore, urge that the following perspectives be brought center-stage:

1. Capture of epistemic infrastructures and perpetuation of the neo-colonial development project

Today, the trajectories of AI development are neo-colonial. Data resources of the majority world are captured by intelligence corporations of the United States. As Michael Kwet notes, US multinationals have designed digital architectures which, in one way or another, allow them to accumulate vast fortunes based on rent (in the form of intellectual property or access to infrastructure) or data extraction. By exercising centralized ownership and control of the three core pillars of the digital ecosystem: software, hardware, and network connectivity, the majority world is assimilated into the tech products, models, and ideologies of foreign powers, led by the US. This, as Kwet argues, constitutes digital colonialism. Much like exporting raw cotton and importing textiles, countries part with data and become fertile digital markets for US-based corporations to extract value from.

As neo-colonial epistemic infrastructures, AI systems reorder knowledge and learning within the global economy. They eviscerate local pockets of capital accumulation and domestic capabilities. For instance, a taxi driver's embedded knowledge of local routes is rendered obsolete, since she must now defer to the algorithm that leads her way. Similarly, farmers' generational knowledge of soil, climate, and seed diversity is increasingly displaced by proprietary AI-driven agritech platforms that often steer them away from locally adaptive practices toward recommendations aligned with corporate product pipelines. It is quite ironic that the algorithms end up displacing the local practices and contextual knowledge that formed the very basis of their training data. AI systems owned and controlled by corporations based in advanced economies increase the technological dependence of poor countries, weakening their capacity to learn, innovate, and move into competitive positions within the global knowledge economy in the future.

Further, as AI erodes the ecological commons of the South and displaces local communities, ecological refugees of AI are an emerging reality. The physical infrastructures needed for training and running advanced AI models rely on rare earth metals extracted through environmentally damaging processes and unethical labor practices. Similarly, the data centers needed to power AI are increasingly set up in locations already experiencing water and energy scarcity. Additionally, these data centers are diverting scarce resources from agriculture and local food systems, undermining livelihoods and local cultures. This dynamic again mirrors historical patterns of colonial extraction, with the Global South continuing to supply the labor and natural resources for the Global North's technological and economic advancement, while disproportionately bearing the massive environmental and social consequences.

2. Commodification of the whole of sociality

The erosion of the knowledge commons is not just about the appropriation of Indigenous knowledge or traditional cultural heritage. It reflects a broader commodification of the whole of sociality, with profoundly negative consequences for the free and collective development of culture.

The training datasets of AI, especially foundational models, draw not only from copyrightable material but also swathes of cultural data drawn from decades of digitally-mediated social interaction and cultural production—resources which should belong to and serve the community as a whole. However, Big Tech actors are able to continuously extract, aggregate, and repurpose this data to train their AI models, without returning the benefits to the communities that generated it, and often even restricting access to such models from these communities. Apart from the harvesting of cultural data points, Big Tech actors also heavily draw from shared informational resources. These include open datasets and publicly-funded knowledge commons resources such as archives, libraries, and traditional knowledge and art forms.These are converted into proprietary systems that consolidate their control over cultural production and dissemination. As Ramya Chandrasekar notes, "the distributional effects of these shared informational resources are not equal."

Another risk, as noted by Saffron Huang and Divya Siddarth, is the "poisoning of the information sphere with easy-to-create low-quality data." The outputs of generative foundation models can be untrue, biased, or of low quality, which in turn lead to "proliferation of both accidental and deliberate mis/disinformation and biased, inappropriate, or low-value content."

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The advent of AI-powered encyclopedias like Grokipedia further exacerbates this risk of pollution of the knowledge commons through a top-down assertion of epistemic authority. This has dangerous implications for our freedom of thought and creates new challenges for epistemic rights.

Further, the no-brakes approach to universal application of AI agents upends social relationalities and psychosocial agency. As AI systems increasingly simulate care, companionship, and emotional labor, they intervene directly in meaning-making processes that are otherwise firmly grounded in human relationships and community norms. This creates new forms of vulnerabilities. For instance, AI chatbots are persuading and giving suicide-related advice to children under mental distress. This exemplifies the danger of ungoverned and unaccountable AI systems interacting with vulnerable individuals possessing limited capacity to critically evaluate their outputs. A research study by Stanford University showed that AI chatbots, used as companions, therapists, and confidants, are not only ineffective but can reinforce stigma, produce dangerous responses, and deepen social isolation. Experts are now warning us of AI-induced psychosis as more and more people turn to chatbots for validation and emotional guidance, and AI systems begin to simulate sociality without the contextual intelligence, moral responsibility, or care-based norms that undergird human interaction.

3. Erosion of the capacity for the free development of all cultures

Yuval Noah Harari warns us that as a small group of powerful actors gain access to massive amounts of data, human beings risk becoming "hackable" and their choices in critical aspects of life, such as education, employment, and political decisions, get steered by algorithmic manipulation. Harari also highlights the cultural consequences of AI systems surpassing human abilities in storytelling, art, and music. As AI-generated content gains more attention than human creative works, he points to the threat of dilution of the human cultural fabric and even the emergence of new cults centered around non-human authorship.

AI systems are not culturally neutral, as their training data often reflects historical inequalities and dominant epistemologies. This results in biased output that marginalizes, misrepresents, and invisibilizes minority culture, knowledge, and language. This is a violation of Article 27 of the ICCPR which protects the right of minorities to enjoy their culture and language.

Indigenous communities and their cultural rights are uniquely vulnerable to harm in the emerging AI landscape because these technologies frequently extract and commodify their cultures, values, knowledge, narratives, aesthetics, and diverse artistic expressions. For instance, the Māori community has raised concerns about generative AI presenting distorted imageries of their culture, often from a colonial viewpoint. The recent example of AI-generated images used by Kenya's State Department of Culture to depict Maasai traditions further illustrates the problem: the system depicted the Maasai neck bracelet, an ornament traditionally worn only by women, as being worn by men. Such inaccuracies in AI depictions of Indigenous culture are not just aesthetic mistakes, but cultural transgressions, erasing or disembedding the symbolic systems that have been carefully preserved across generations. This is in contradiction with the right of Indigenous people to the dignity and diversity of their cultures, traditions, histories, and aspirations under Article 15 of the UN Declaration on the Rights of Indigenous Peoples.

Further, in the context of the rise of AI-driven Generative Biology models, a recent study suggests that in most cases, relevant rights-holders such as indigenous people, local communities, and farmers are not aware of how biological and genetic samples are collected from their territories or bodies and fed into AI models fuelling the GenBio industry. This violates the right of Indigenous Peoples to maintain, control, protect, and develop their cultural heritage, human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, etc, and the manifestations of their science, technologies, and cultures—a right protected under Article 31 of the UN Declaration on Indigenous People's Rights.

Thus, in the current extractive AI paradigm, AI systems risk turning ancestral stories, environmental knowledge, genetic material, and ritual symbols into decontextualized digital commodities.

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4. Limitations of copyright frameworks in protecting collective cultural expression

The data economy, based on a 'finders-keepers' logic, has led to a serious crisis of knowledge extraction. AI training datasets involve a large amount of copyrighted works of authors/creators/artists and culturally embedded works, without attribution, compensation, or even transparency about what has been used. The issue is compounded by the opacity of AI models that do not disclose their training data, making it nearly impossible for copyright holders to determine whether their work has been appropriated or to seek legal recourse. While a host of lawsuits have been filed by copyright-holders against Big Tech AI actors, given the difficulty in proving copyright infringement, existing IP frameworks are ill-equipped to address the challenges posed by AI to copyrighted work.

Additionally, copyright laws are rooted in notions of individual ownership, and thus fail to protect communities' collective cultural expressions, leading to widespread appropriation of sacred designs, symbols, and knowledge. Even where copyright is successfully exercised, it remains a defensive tool that does not guarantee communities' access to, or control over their cultural data for use by future generations., Thus fractures the continuity of their living cultural heritage.

Q10. Do you think regulating AI would be an effective way to protect cultural rights when pursuing the right to development?

Regulation of AI is necessary to protect cultural rights and further the right to development, especially given the disparity in power, resources, and AI capabilities among countries and Big Tech actors, and the potential for wide-ranging harms from AI systems to cultural and epistemic infrastructures. We suggest the following axes for regulating AI:

1. A global governance framework for training data that promotes the right to collective development and cultural self-determination.

The use of training datasets by Big Tech actors, without sharing the resulting benefits with the communities from whom such datasets are extracted, is concerning. There is thus a need to reassess the current dominant market-led trajectory towards AI development and governance. To ensure communities are able to exercise the right to maintain, control, protect, and develop their intellectual property over cultural heritage, traditional knowledge, and traditional cultural expression, a fundamental shift is needed, from extractive models of development to a collaborative, culturally responsive, and accountable approach. Such a shift necessitates, firstly, recognition that data is an outcome of social relations and, secondly, that data offers value extending beyond the private interests of organizations, with the potential to benefit society at large.

As a step towards ensuring that data is managed for the common good / in the public interest, a global data governance framework is essential. The framework must recognize data as a 'knowledge commons.' It must move beyond stewardship frameworks of FAIR (Findable, Accessible, Interoperable, and Reusable) and CARE (Collective Benefit, Authority, Responsibility, and Ethics) to address AI harms and ensure equitable benefit sharing for development.

Such a framework for governance of training data used in AI models is crucial to foreground the rights of impacted communities in light of the increasing privatization of the knowledge commons. To protect cultural rights and ensure benefits for the contributing communities, the framework should ensure:

1. Transparency: AI developers should be required to disclose sufficiently detailed summaries of the datasets used to train their models, as delineated in the EU AI Act, more specifically Article 53(1)(d). AI developers should be required to make details of training data available to the public, so as to provide an informational basis for impacted communities to exercise their rights.

2. Access: Preferential or free access to communities whose data significantly contributed to the training of AI models, as also recommended in the report of the Independent Expert Group on AI and Culture convened by UNESCO.

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3. Benefit sharing: The revenues from AI models trained on communities' data should be equitably shared with the relevant communities.

4. AI training data provenance standards: The UN HLAB, in its proposal for a global data governance framework, recommends common standards around AI training data provenance and use, for transparency and rights-based accountability across jurisdictions.

2. IP reform

The current regime of trade secrets and patents reinforces Big Tech's dominance in the AI and data economy by entrenching its first-mover advantages and creating high entry barriers for smaller actors and innovators, particularly from the Global South. These overexpansive legal protections allow early entrants to lock up critical data sets (often drawn from public knowledge resources), proprietary algorithms, and infrastructural knowledge through trade secrets, effectively limiting open innovation and reinforcing monopolistic control over AI development. There is thus a need to reconfigure the balance between proprietary rights on one hand, and transparency, accountability, and public interest on the other. Global and national IP and trade secrets regimes need to be reformed to achieve this balance. In this regard, see our specific recommendations below.

a. Treating data as an essential cultural infrastructural good

In order to harness innovation ecosystems that foster inclusive, equitable, just, and creative societies, we need to recognize and govern data as an essential cultural infrastructural good. Across the world—and particularly in the Global South—artisanal livelihoods and ecological stewardship are predicated upon or embedded in traditional knowledge systems. As recognized by the UN General Assembly, culture represents not only a source of identity, but also of innovation and creativity that is "an important factor in social inclusion and poverty eradication, providing for sustainable economic growth and ownership of development processes". As digital systems increasingly depend on data derived from these contexts, governing data as cultural infrastructure becomes necessary to prevent enclosure by first movers and also to enable public interest innovation that is grounded in cultural context.

This will entail, amongst others, a commons-based governance of raw non-personal data. As observed by Tomasso Fia, raw non-personal data is "a byproduct or a side effect of activities in which many actors engage". Yet the prevailing model of data ownership, where the holder of data is treated as its owner simply by virtue of de facto control, obscures this societal dimension and enables monopolistic control. Rebalancing the IP and trade secrets regime, therefore, requires measures that (i) limit the over-extension of trade secret protections, (ii) build a robust digital commons through public datasets with safeguards, and (iii) introduce public interest exceptions under international frameworks to ensure transparency, accountability, and equitable data access.

We have the following suggestions in this regard:

- To counter the overuse of trade secrets exceptions, we must consider the concept of 'thin trade secrecy', which suggests that even if datasets are recognized as trade secrets by a court, the rationale for shielding them from public disclosure is fundamentally weak, especially where they embody cultural knowledge or have significant public-interest value. Thus, the protection granted to them should be minimal and non-traditional, diverging from IP as traditionally understood. Such protection should defer to a compelling public interest in disclosure.

- States should enable the creation, maintenance, and sharing of high-value non-personal datasets as public goods, enhancing the right to access raw non-personal data as a commons—particularly in sectors where cultural knowledge forms the basis of livelihoods and innovations, such as agriculture, crafts and ecological stewardship. At the same time, appropriate safeguards must be put in place to ensure that such datasets are not enclosed/appropriated by private actors through AI models.

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- Building on the general provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, in particular Articles 7 and 8, states should introduce public interest exceptions to overly broad or extended trade secret protections in AI systems. Such exceptions are necessary to ensure transparency and accountability over model inputs and outputs, prevent enclosure of the knowledge commons, and enable international technology transfer. States should also consider mandatory data-sharing obligations for Big Tech corporations where datasets hold significant societal value. This aligns with the BRICS Leaders' Statement, which stresses that "a balanced approach is needed to protect intellectual property and safeguard the public interest," and calls for transparency over AI model inputs and outputs as well as safeguards that ensure accountability and compliance with domestic law.

b. Reorienting intellectual property to safeguard collective cultural rights and living cultures

Conventional copyright frameworks remain ill-equipped to protect the collective, intergenerational, and culturally embedded forms of creativity that underpin Indigenous and traditional knowledge systems. Pluralizing intellectual property, therefore, requires shifting its focus away from narrow economic incentives and toward equity, cultural self-determination, and the safeguarding of sustainable knowledge systems. A rights-based approach to "living culture" demands two parallel moves: strengthening community control over their own cultural expressions, and ensuring that doctrines such as 'fair learning' or 'fair use' cannot be misused as vehicles for extraction or appropriation. This requires:

- Safeguards for Indigenous cultural expressions: National legislations should grant perpetual protection (unlike time-bound copyright) to Indigenous communities' cultural expressions to prevent exploitation and misappropriation. IP laws should be revised to recognize the collective nature of Indigenous cultural expressions, reflecting the realities of creation and granting communities the means to prevent unauthorized use. This may be further supported by copyright exemptions that prohibit individuals from claiming exclusive rights over expressions involving Indigenous creativity, knowledge systems, cultural symbols, etc.

- Preventing the use of 'fair use' (or 'fair learning') as a licence for appropriation: In contexts where creator communities, especially Indigenous and traditional knowledge holders, are uniquely vulnerable to cultural extraction, the permissibility of using copyrighted material to train AI models must be assessed through a stricter, community-protective interpretation of the 'fair learning' standard proposed by scholars. While fair learning may offer a mechanism to balance authors' rights with cultural innovation, it must be conditioned by robust constraints and accountability mechanisms. Accordingly, any fair learning exception should be strictly conditional.

The AI system's outputs must not cause "significant substitutive competition" against the original creators, and for collective knowledge, particularly traditional or Indigenous knowledge, assessments of fairness must factor in the heightened risks of cultural appropriation, distortion, and enclosure. Equally important, fair learning should function not as a blanket licence for external actors, but as a defensive mechanism that preserves community rights, allowing communities the ability to access, inspect, and repurpose data derived from their cultural expressions—thereby supporting the continuity, self-determination, and ongoing evolution of their living cultures.

c. Extending existing frameworks that recognize collective knowledge rights to sectoral data governance

Instead of applying a one-size-fits-all regulatory framework, AI regulation needs to be contextualized for specific sectors such as agriculture, healthcare, education, etc. This approach tailors norms and rules laid down by national laws or standards and guidelines laid down by industry bodies to the unique characteristics of AI applications in each sector. Crucially, such a sectoral approach should extend existing frameworks that recognize collective knowledge rights to the sphere of AI governance to ensure that prior rights of knowledge holders (such as farmers, Indigenous Peoples) are respected when their knowledge is digitalized, analyzed, or used to train AI systems.

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A useful parallel can be drawn from the International Treaty on Plant Genetic Resources for Food and Agriculture ("Seeds Treaty"), a legally binding global agreement adopted by the Food and Agriculture Organization. The Seeds Treaty recognizes the enormous ongoing contributions of local farmers and Indigenous communities in the conservation and development of plant genetic resources. Accordingly, it provides a multilateral system for accessing and sharing genetic material for important crops. However, the implementation of the Treaty has faced significant shortfalls: while the seeds industry has benefited from facilitated access to the Treaty material, it does not contribute to the Benefit Sharing Fund, and fails to meet disclosure obligations regarding the place of origin of genetic material. Additionally, States often violate farmers' rights over seeds through IP laws, and the industry considers Digital Sequence Information as exempt from the Treaty, meaning that it is not subject to prior consent or benefit-sharing obligations.

These shortcomings provide important lessons for AI governance. Data derived from farmers' traditional knowledge, including phenotypic, genomic, or ecological information, should be treated as a shared, collective resource, with enforceable rules for prior consent, origin recognition, and equitable benefit-sharing. Regulations must robustly ensure that commercial actors cannot exploit or enclose the digital counterparts of community knowledge without accountability.

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