

AI GUIDELINE

OPPORTUNITIES LIMITATIONS RISKS RIGHTS

ORIENTATION AND SECURITY
IN THE USE OF AI
FOR ADVERTISING FILM PRODUCTIONS

GUIDELINE

CONTENT*

1. Introduction

2. Principles

3. Do`s & Dont`s

4. General guidelines / Legal orientation

- 4.1. Opt-out for text and data mining
- 4.2. Contractual provisions and liability for the use of AI
- 4.3. Liability risk when using AI - WITHOUT instruction from the client
- 4.4. AI and copyright
- 4.5. EU AI Act: Mandatory labelling of advertising films from 2 August 2026

5. Practical orientation in the production process

6. Rethinking timings

7. Risks & opportunities

8. Conclusion / Outlook

* The content in this guide - especially the examples, notes and sample clauses- is intended exclusively to provide members with general information and non-binding orientation. The guide does not replace legal advice in individual cases.

Model wordings for contractual provisions are provided without any guarantee that they are complete, correct or up-to-date. They do not account for the particularities of individual cases, so an independent legal review and adjustment is necessary in each case.

1. INTRODUCTION

The production of advertising films is at a crossroads.

The integration of artificial intelligence (AI) opens up a new testing ground for the industry in which opportunities and uncertainties can alternate at a dizzying pace. Amidst the initially impressive results, technological euphoria and tangible production problems, there is one thing that is clear: AI is here to stay - and it will permanently change and diversify the production landscape.

This change is playing out at an unprecedented speed and is putting familiar working methods, roles and decision-making processes to the test. Traditional production methods - which are shaped by planning, experience and control - are now colliding with new, dynamic and occasionally unpredictable AI processes.

In particular, the issues of **process reliability, quality assurance and legal certainty** have not been sufficiently defined as yet.

AT PRESENT, THE DEPLOYMENT OF AI IN ADVERTISING FILMS CAN BE DIVIDED INTO FOUR AREAS:

Creative support tools - to develop ideas and for pre-production

Process optimisation - organisational and administrative use scenarios

Hybrid productions - blend of AI-powered and conventional methods

Full AI productions - films generated entirely by AI

While the prospect of full AI productions remains the subject of considerable debate, the proportion of hybrid and supported use cases is experiencing a significant rise. This is associated with **reorientation in the decision-making culture**: less control over the end result translates into greater openness in the process, more iteration and new forms of collaboration.

Legal certainty is still among the greatest challenges - for producers and clients alike. For as long as the legal and contractual frameworks remain in flux, the following applies: anyone expecting complete legal certainty will have no choice but to revert to conventional production processes without AI.

This guide summarises the current **Recommendations of the German Producers Alliance (Advertising Section)** and provides orientation for the sensible, responsible and transparent use of AI in the production of advertising films.

It is intended to help achieve realistic project planning, minimise risks and ensure that the creative potential of new technologies is harnessed constructively.

2. PRINCIPLES

- Creative processes and forms of artistic expression have always benefited from traditional tools and technologies. Assuming it is well thought out and used sensitively, AI will continue to strengthen the process of creating advertising films – **AI enhances, but does not replace creativity.**
- **Works created by human hand** such as scripts, storyboards, visual concepts or performances must be respected and copyrights and personal rights require protection. Any use of third-party works – including recognisable persons or performances – must be negotiated, clarified and approved in advance.
- **Transparency is essential to the responsible use of AI!** A trustworthy process requires clear documentation and disclosure concerning the use of AI. This applies from the sources of the material to the tools used and the results.
- We firmly believe that the knowledge and skills of directors, DoPs, creative producers, editors, designers and other creative professionals are equally important and beneficial in the development and completion of AI-powered projects as they are in conventional film production.

3. DO'S

- Approved and secure tools should only be used after checking the licence and terms of use
- Use of local systems within the company network
- Seamless documentation of the workflow, prompts and tools used
- Protection of sensitive data and confidential information, so no uploads to public or unprotected systems
- Frank communication to customers of the opportunities, potential, limits and risks of AI
- Feasibility studies prior to the project launch (research & development)
- Clear establishment of coordination processes, feedback loops, number of iterations
- Clear indication and embedding of "points of no return" in the process
- Assignment and communication of liability risks for clients
- Inclusion of clients in the risks if they insist on the use of AI
- Labelling of deepfakes; mandatory from 2 August 2026 in accordance with the EU AI Regulation
- Clarification of potential third-party rights
- Request for written authorisations
- Compliance with all data protection requirements
- Consideration of moral and ethical principles
- Non-binding orientation on model clauses created by German Advertising Film Producers as a basis for discussion and testing

& DONT'S

- Uploading of confidential or personal data to unprotected cloud AI systems
- Deployment of unlicensed AI models
- Use of deepfakes without suitable labelling
- Adoption of AI results without human content and technical review
- Underestimation of the time required for AI projects
- Disclosure of prompts & seeds to the client
- Input of material protected by copyright or personal rights

4. GENERAL GUIDELINES / LEGAL ORIENTATION*

****Note:** Model wordings for contractual provisions are provided without any guarantee that they are complete, correct or up-to-date. They do not account for the particularities of individual cases, so an independent legal review and adjustment should be conducted in each case.*

4.1. OPT-OUT FOR TEXT AND DATA MINING

Opt-out for FHV & SCoPE:

“The production company explicitly reserves the right to use the film, film excerpts or individual components (e.g. soundtrack, image, moving image) for commercial text and data mining (which also includes the training of artificial intelligence) in accordance with Section 44b para. 3 Copyright Act (UrhG).

The opt-out is already included in the current version of the FTP (point 11.4) and in the SCoPE V20 offer letter.

This is a reservation of rights in which the rights to use the advertising film for commercial text and data mining or for training an AI are explicitly reserved for the advertising film producers.

This means that a separate agreement is required if the client wishes to use the film for these purposes.

Practical note concerning acceptance of the opt-out/reservation of rights:

Some members have reported that in contract negotiations, clients flat-out refuse to accept the above reservation of rights pursuant to Section 44b para. 3 UrhG. This is based in particular on the concern that a reservation of this kind would not only restrict use by the client, but also present the production company with the opportunity to use the advertising film for commercial text and data mining or AI training.

To counter this objection, the reservation of use can alternatively be given a narrower wording and be limited explicitly to use by the client. This would clarify in these cases that the reservation applies exclusively to consent vis-à-vis the client, without allowing the production company to reserve rights of use for these purposes. A suitable wording could be formulated as follows, for example:

“Any use of the film, film excerpts or individual components (e.g. soundtrack, image, moving image) by the client for commercial text and data mining (which also includes the training of artificial intelligence) requires the prior consent of the production company and a separate agreement (reservation of use pursuant to Section 44b (3) UrhG).”

4.2. CONTRACTUAL PROVISIONS AND LIABILITY FOR THE USE OF AI

In practice, it is increasingly common for agencies or clients to explicitly request the use of AI tools – often to reduce costs (e.g. by eliminating licence fees for third-party material or stock footage). There are also reports from the field that clients allocate budgets that would barely permit implementation or completion of the project in the envisaged quality and scope or make it commercially infeasible without at least partial use of AI.

This leads to a shift in the distribution of risk: It is inappropriate for the entire risk of infringing rights to be borne by the production company if use of AI is not carried out by the production company but at the explicit request of the client or if the use of AI is absolutely necessary to meet the budget (and this has been communicated to the client).

Legal background: Section 633 para. 1 German Civil Code (BGB) stipulates that the production company, as a rule, owes a work that is free from defects of title.

This obligation also applies to the use of AI – for example for image, sound or video processing. But if the client or the agency itself insists on the use of specific or unspecified AI technologies, it must also bear the consequent legal uncertainties with regard to third-party rights (e.g. copyright, personal rights or trademark rights) and should also indemnify the production from any corresponding liability risks.

As things stand, there is also no insurance that covers these risks, so it is currently uninsurable.

Aside from liability and indemnification issues, other aspects that may be relevant in connection with the use of AI should be ordinarily addressed in corresponding contractual clauses as well. These include, for example, provisions on the lack of exclusivity in regard to AI-generated outputs, the involvement and selection of AI tool providers (due diligence standard, training rights), as well as transparency and labelling obligations vis-à-vis the public.

The following clause would be suitable as a **non-binding wording variant** for corresponding regulations and can be included – amended to suit the individual case – in film production contracts, SCoPE offers or project-related supplementary agreements. It makes no claim to completeness or legal suitability for all constellations.

Model wording:

Deployment of artificial intelligence (AI)

1. At the request of the client, the production company will, during production of the film work, use tools, applications and programs (referred to in the following as "AI programs") which independently create non-predetermined content such as images, texts, moving images, voice works, music, etc. (referred to in the following as "AI content") on the basis of "artificial intelligence", e.g. in the areas of image (e.g. concept frames, retouching, matte paintings, assets, etc.), video (e.g. lip synchronisation, deepfake, style adaptations such as comic style, etc.) and sound (e.g. voice-over, voice cloning, music production, sound design, etc.). The production company will use such AI programs with the due care of a prudent business.
2. The client explicitly acknowledges that AI-generated content is currently not eligible for copyright protection, so that the production company cannot grant the client any exclusive copyrights to this AI content and the AI content generated with AI programs may also be used by third parties. Notwithstanding, the production company authorises the client to use the AI content generated by means of AI programs to the extent enshrined in [reference to the clause on the extension of rights]. Furthermore, the production company shall not use the AI content created for the client in any other way for itself or third parties; however, this does not include use by the production company and other parties involved in the production of the film work for the purposes of self-promotion.
3. The production company selects AI programs according to customary industry standards of due diligence and, according to information from the provider, uses AI programs that do not provide for the use of client content or product-specific materials for training or further development of the AI models. Notwithstanding, the production company does not guarantee or warrant that AI providers will refrain from the technical or factual use of the content for training, analysis or improvement purposes. The production company has no further obligation to check, control or monitor the internal processing procedures of the AI providers.
4. Responsibility for the legal permissibility of the publication, exploitation and other use of AI content and advertising measures created using AI programmes shall rest with the client. The client warrants with regard to all content and materials provided that these can be processed and used by the production company free of third-party rights, in particular without further declarations of rights, within the scope of using AI programs and that they do not infringe any third-party rights. The production company assumes no legal obligation to examine or advise the client with regard to the use of AI programs, the client's content used for this purpose or the AI content generated with the AI programs (e.g. with regard to copyright, personal rights, data protection law, antitrust law, trademark and design law).
5. Where a legal labelling obligation applies to the publication of AI-generated content (e.g. under the AI Act), the client alone shall be solely for compliance with this labelling obligation.
6. The production company provides no guarantee or warranty that the AI content generated by AI programs is free from infringements of third-party rights (e.g. copyrights, trademark rights or personal rights) or laws.
7. The parties agree that legal risks in connection with the use of AI systems, in particular with regard to possible infringements of third-party rights (e.g. copyright, personal rights, data protection rights, trademark rights or other property rights), are currently among the risks that are not insurable under the usual terms and conditions of film insurance. In this respect, the production company assumes no cost or liability risk for the consequences of such uninsurable risks.
8. The client shall, upon first request, indemnify the production company against all claims of third parties directed against the production company (including the costs of reasonable legal defence), insofar as these claims relate to an infringement or breach of law through the use of AI programs, to an infringement or breach of law through the use of the AI content created/generated by an AI program and/or to an infringement or breach of law with regard to the further processing of the content of AI programs provided by the client.

Practical categorisation

- The clause addresses constellations in which AI tools are used at the request or on the basis of a specification by the client. Its purpose is to ensure that a biased shift in liability to the detriment of the production company does not take place in such cases.
- Comparable considerations may also be relevant if fixed budgets only permit its completion with (partial) deployment of AI tools and this has been transparently communicated to the client in advance. - If, on the other hand, the production company uses AI tools on its own initiative, the general contractual obligations shall apply, especially in regard to defect-free production of the work. Where these constellations apply, transparency must be established with the client at an early stage and - depending on the project, tool landscape and risk profile - a separate contractual categorisation concerning liability, indemnification or responsibilities shall become necessary.

4.3. LIABILITY RISK WHEN USING AI - WITHOUT INSTRUCTION FROM THE CLIENT

LIABILITY

The advertising film production company is liable as a rule for the lawful use of AI tools in the production of advertising films.

The advertising film production company must, within the scope of its contractual obligations, ensure that the advertising film is handed over to the client **“free from defects of title”** (Section 633 para. 1 BGB).

Where the advertising film production decides on its own initiative to use AI tools for certain work steps in the production of an advertising film, the legal provision from the law on contracts for work and labour as described above is also appropriate. It sets out the customary distribution of risk in the production of an advertising film and applies also to other legal risks.

For example, if the advertising film production decides to show a copyright-protected poster “in the shot”, it shall also be responsible for ensuring that this use of copyright material is legally or contractually permissible. The same applies to the deployment of AI.

In these cases also, the production company should ensure transparency on the use of AI as early as possible, e.g. to be able to complete the project within the client’s budget and to make appropriate prior arrangements in regard to liability, etc.

POTENTIAL COMPROMISES IN PRACTICE FOR THE USE OF AI WITHOUT INSTRUCTION FROM THE CLIENT:

Even if the liability regime under a contract for work and labour applies when the production company uses AI on its own initiative, practical experience has shown that in these constellations, many clients are still willing to discuss the matter and that it is possible to negotiate compromises for specific aspects.

Compromise solutions would be conceivable in particular

- if the production company proposes the use of AI on its own initiative, without an explicit request from the client or compelling budgetary reasons apply, or
- if the client rejects a full AI-related liability or indemnification clause, but at the same time accepts transparent use of certain AI tools.

Potential elements of a compromise provision

- Disclosure of the specific AI tools used (full transparency).
- (Limited) documentation and disclosure of key prompts, parameters and use cases.
- Coordinated content specifications or “no-gos” for AI prompting (e.g. confirmations from AI prompters).
- Exclusion of particularly risky use cases.
- Increased standard of diligence, assurance that human output review will take place.

Clear boundaries, even in a compromise

Typically, the following should not be included, also in compromise solutions:

- Guarantees of rights or defects of title.
- Unlimited liability for uninsurable or only partially insurable AI risks.

4.4. AI AND COPYRIGHT

1. INTRODUCTION AND RELEVANCE FOR ADVERTISING FILM PRODUCTIONS

At present, productions are frequently faced with the question of how content created by or with AI should be categorised under copyright law:

Who is the author? What rights arise and how can production companies ensure protection and exploitation of their investments with legal certainty or transfer them to the client? Who is liable for legal infringements?

Although some legal issues remain unresolved and there is still relatively little case law from Germany on the subject of AI and copyright, we would still like to provide practical orientation on the copyright framework for the deployment of AI in advertising film productions – including the distinction between copyright, related rights and investment rights.

We will update this section from time to time in the event that new findings emerge from case law or similar.

2. COPYRIGHT FRAMEWORK

2.1 Basic principles of copyright law

Copyright law protects works that are the result of an individual's personal intellectual creation (Section 2 para. 2 UrhG).

This protection comes into effect automatically with the creation of the work – without registration or labelling – and grants the comprehensive exploitation and moral rights to the author.

Related rights (ancillary copyrights) exist in the film and media sector in addition to the copyright itself.

They do not cover the creative performance but the economic and organisational performance – for example in regard to sound recordings, broadcasters or film producers such as advertising film producers (Section 85 et seq., 94 UrhG).

2.2 AI and the question of authorship

Exclusively AI-generated content is not protected by copyright. It is not the outcome of human creation, rather of automated processes whose results are largely beyond the user's control. **The Federal Ministry of Justice (BMJ, FAQ Artificial Intelligence and Copyright, March 2024) clarifies:**

**"Only personal intellectual creations by an individual are protected works within the meaning of copyright law.
Therefore, exclusively AI-based content is not afforded copyright protection."**

In some cases, though, an alternative provision may apply if the human being intervenes creatively in the development process – for example by selecting, controlling, creatively guiding or post-processing the AI results. In these cases, the overall output may be afforded copyright protection as a so-called hybrid work, provided that the human contribution reaches the required level of creativity and the use of AI as a mere auxiliary tool recedes into the background.

Nonetheless, merely entering simple prompts (e.g. short, general text commands) is not sufficient to justify copyright protection as a rule. In general, such actions do not constitute a "personal intellectual creation". Therefore, the question of whether an AI-powered contribution should be classified as a copyright-protected work depends heavily on the individual case, in particular on the extent to which the human being shapes the creative output in regard to its content, aesthetics or dramaturgy and which creative leeway they actually exploit. It follows that the crucial factor is the user's individual creative contribution to the result.

If sequences of the advertising film are autonomously created by AI without human design, there can be no "personal intellectual creation", and the results are therefore not protected by copyright (at least).

Practical tip: In practice, written documentation of the human influence and the creation process (including tools used, etc.) is therefore advisable so that the authorship and hence the ownership of rights by the production company or creative contributors can be verifiably demonstrated in the event of a dispute.

2.3 Performance and investment protection

a) Moving pictures (Section 95 UrhG)

Moving pictures are image sequences or image and sound sequences that convey the impression of moving images without achieving the copyright quality of a film work. They are therefore, in the broader sense, films that lack the necessary individuality or creative character. The technical method of production is not important. Protection is afforded not only to conventionally recorded moving images, but also to image sequences that are generated by technical means or automatically. The term of moving pictures also extends to products that are similar to films, but limited only to the related rights of the film producer. Given that moving picture protection is not linked to a creative performance, image sequences generated by means of artificial intelligence can also fall under Section 95 UrhG, provided that an image sequence can be perceived as a moving image.

b) Differentiation from film works

The legal provisions of Sections 88 et seq. UrhG concerning films apply both to film works (Section 2 para. 1 no. 6 UrhG) and to moving pictures. The difference between the two lies solely in whether the required quality of the work is achieved. Like with other types of works, there is also a so-called “lowest level” for the protection of film works (Section 2 (1) No. 6 UrhG), in which it may be difficult to distinguish between sufficient and insufficient individuality. But this distinction is not relevant to the decision in many cases.

c) Related rights of the film producer (Sections 94, 95 UrhG)

This is because, regardless of the question of the quality of the work, the related rights of the film producer apply in any case. This protects the economic, technical and organisational performance inherent to the production of a film or moving picture. Section 95 UrhG explicitly refers to the provisions applicable to film works for moving pictures, including Section 94 UrhG. This means that even in the case of moving pictures that do not themselves constitute a work, related rights still apply that are not based on creative individuality, but on the investment and organisational workload. Often it is precisely these additional related rights that help to avoid differentiation issues between a film work and moving pictures. Claims can regularly be based on related rights, removing the need to determine whether a film work exists in the specific case.

d) Significance for AI-powered advertising film productions

For advertising film productions that use AI, this means that

- Even if an AI-powered moving picture production fails to achieve the quality of a film work, it may still be protected as a moving picture.
- Section 95 UrhG indicates the related rights of the film producer to moving picture protection according to Section 94 UrhG.
- The economic and organisational responsibility of the production company is decisive, not the human creativity of the output.
- In practice, the question of “film work or moving picture” can often remain unresolved without jeopardising legal protection.

The related rights therefore ensure that even AI-supported or largely automated advertising film productions remain legally protected and commercially exploitable.

3. AI IN THE PRODUCTION PROCESS

AI can be used in various production phases, from the development of ideas to post-production.

What matters from a legal perspective is always the extent to which humans control the creative process.

3.1 AI as a tool

When AI is used in a supporting role – for the creation of mood boards, colour palettes and shot lists, for example – creative responsibility will remain in human hands. In this case, AI is merely a technical tool, comparable to a camera or software. Copyright and protection of the film producer remain fully intact.

3.2 Semi-automated or hybrid processes

Humans and machines work together in many modern workflows. What matters in this regard is the degree of human influence.

The decisive factor is that the final creative decision rests with the human. Downstream curation, arrangement or editing of the output may lead to the creation of a copyright-protected work, depending on the circumstances of the individual case, cf. Section 2 above.

3.3 Fully automated processes

A work within the meaning of the UrhG is not created if film sequences are produced without human input or only on the basis of simple prompts. Nevertheless, protection of the film producer of moving pictures pursuant to Sections 95, 94 UrhG still applies, cf. also Section 2 above. In these cases, production companies should prepare written records of the AI source, version and parameters in order to prove the chain of custody and any licence obligations.

4. TRAINING DATA, AS WELL AS TEXT AND DATA MINING (SECTION 44B URHG)

As a rule, the use of copyrighted works for the training of AI systems is only permitted if the rights holder has not declared an “opt-out” (Section 44b para. 3 UrhG). AI providers must respect these declarations. In regard to new AI systems, the EU AI Regulation has required providers of generic models to maintain transparency concerning the training data they use since August 2025. A transitional “grace” period will apply to current AI providers until August 2027. What does this mean for production companies? They should ensure that the AI tools deployed uphold this transparency in order to avoid the risk of legal violations.

5. USE OF AI OUTPUTS IN PRODUCTION

As a rule, AI-generated content can be used freely, provided that the AI providers allow commercial use in the terms and conditions of licence and the AI outputs do not infringe any third-party rights. However, particular caution must be exercised when AI tools are based on copyrighted training data and reproduce parts of this material. In such cases, consent may be required for editing or unauthorised reproduction.

An internal audit is recommended:

- Does the output contain recognisably protected templates (e.g. music, logos, brands)?
- Which terms and conditions of licence apply to the tool used (e.g. commercial use permitted)?
- Is the output subsequently checked and edited by creative human professionals (e.g. editing, colour grading, sound design)?

6. CONCLUSION

The following applies to commercial film production:

- Copyright protection can only take effect if human creativity plays a significant role and is always a question of the individual case.
- However, related rights under Sections 95 and 94 UrhG also protect AI-powered productions.
- Production companies are still film producers if they remain economically and organisationally responsible.
- Documentation, the clarification of rights and contractual safeguards are crucial instruments in assuring the legal compliance of AI projects.

4.5. EU AI ACT: MANDATORY LABELLING OF ADVERTISING FILMS FROM 2 AUGUST 2026

The AI Regulation, which will enter into force **from 2 August 2026** (expected, a postponement of the deadline is currently being discussed) and will introduce specific transparency and labelling requirements for certain AI outputs, **but without including a general labelling requirements for each use of IT**. Instead, these obligations will only apply in clearly defined constellations in which artificially generated or manipulated content may be deceptive or misleading. Until then, guidelines and practical aids are likely to be published by EU institutions and others, while our guide will then be updated on an ongoing basis.

PURPOSES AND OBJECTIVES OF MANDATORY LABELLING

The transparency requirements are not aimed at the deployment of AI as such, but at **its use for the generation or modification of seemingly realistic content** that may be perceived as authentic. The decisive factor is therefore the effect of the output on the viewer, in particular the risk of confusion with real people, places or events.

The regulation is intended to **protect trust in audiovisual content**, avoid misleading information and safeguard **personal rights**. In this respect, the AI Regulation has adopted a **risk-based approach** which distinguishes between non-critical creative applications and constellations that appear intended to deceive the audience.

ADDRESSEES OF THE REQUIREMENTS AND DISTRIBUTION OF ROLES ACCORDING TO ART. 50 AI REGULATION

Art. 50 AI Regulation establishes transparency and labelling obligations **according to the specific role** and distinguishes between **providers** and **operators** of AI systems. The actual obligations that apply therefore hinge on the role in which a party is operating.

Providers (Art. 50 (2) AI Regulation)

Providers are those who develop AI systems for generating synthetic content (audio, image, video) or market them under their own name. The transparency obligations apply to the **system level**. This therefore concerns the **tool providers**. Hence, producers are therefore not, as a rule, subject to **transparency obligations as providers**.

OPERATORS (ART. 50 PARA. 4 AI REGULATION)

Operators are those that **actually use** an AI system. This role is decisive for advertising film productions.

However, we are **only** subject to operator obligations when AI is used to generate or manipulate **deepfakes**. Hence, the use of AI in the production process as a whole is not decisive, rather the production of content that may create a **risk of deception or confusion**.

The obligation initially applies to the person who initiated the use of AI and generated the content, which would usually be the **producer** in the production process. However, given that the producer does not themselves proceed to exploit/release the content, the disclosure should be addressed to the client and a clear agreement should be reached with the client that any labelling obligations concerning the audience in the context of exploiting the advertising film must be fulfilled by the client.

WHAT IS A DEEPFAKE?

A **“deepfake”** according to the AI Regulation means AI-generated or modified image, sound or video content that is deceptively similar to real people, objects, places, facilities or events AND may incorrectly seem genuine or truthful to a person.

Examples:

- AI is used to depict an actress using a product without filming ever having taken place > deepfake.
- A city is realistically changed, e.g. buildings are added that do not exist > deepfake.
- A product video shows a car driving across a deceptively genuine, computer-generated landscape that is actually not real, so that viewers might believe that the car actually made the journey > deepfake.
- A completely animated advert with comic characters > not a deepfake (clearly fictional).

Exceptions:

Art, creativity, fiction: Obviously artistic, satirical or fictional depictions do not require labelling as deepfakes.

- Example (excluded): an energy drink gives “wings” in the advert > artistic exaggeration, no mandatory labelling.
- Example (excluded): AI-look, alienated fantasy world > clearly fictional, also excluded.
- Example (mandatory labelling): AI is used to present a politician as if they were endorsing a product > deceptively genuine, therefore deepfake and subject to mandatory labelling. If the advert is satirical, it would still be interesting to see (cf. Sixt advertising) how the courts will adjudicate this question. As things stand, we would assume that mandatory labelling will apply.

Who is responsible?

- As a rule, producers should be transparent with clients about the use of AI in advance, and especially when generating deepfakes of course. They should also obtain written instructions on labelling from the client.
- Producers should contractually agree with the client that labelling upon release is the client’s responsibility.
- Recommendation: Producers always notify the clients when deepfakes are generated and obtain instructions on labelling (so also how and where the client wants the labelling).

How, when and where is labelling necessary?

- Disclosure that the content was artificially created or manipulated.
- When the content is shown to a person at the latest.
- In a clear and unambiguous manner, so visible to others in connection with the respective content.
- The AI Regulation does not prescribe any specific labelling, so simple instructions are conceivable, e.g. “Content generated with artificial intelligence” or “AI-generated scene”, whereby best practices in this field are sure to be established shortly, and we will then update the guide accordingly.

5. PRACTICAL ORIENTATION IN THE PRODUCTION PROCESS

BEFORE THE START OF THE PROJECT

- Coordinate the use of AI with the client.
- **Determine the liability risk.**
- **Name/approve the tools.**
- Reality check: Education of the client about **opportunities, limits, risks, effort, costs** and the **workflow** for AI projects.
- **Create a willingness in the client to accept open-ended outcomes.**
- Where applicable, **clearing** of third-party rights.

WHEN PREPARING AN OFFER

- Check **PAW guidelines such as model contractual clauses** for your own use.
- Conduct a feasibility study (**R**esearch & **D**evelopment).
- Check the client's **T&Cs**.
- Schedule sufficient coordination meetings in the **timing** - **short "check-ins"** rather than major presentations.
- Set **final deadline** (with buffer).
- Define maximum **workload** per feedback loop and refer to **additional costs** for **more workload**.
- **Clear indication and embedding of** "points of no return" in the process
- **Plan B** - consider, agree on and, if necessary, calculate a conventional **back-up solution** for every AI deployment.
- Calculate sufficient **producer days** and **licences**.

FROM THE START OF THE PROJECT

- Seamless **documentation** of AI deployment where possible.
- **Quality check:** More thorough check for technical errors.

6. 6. RETHINKING TIMINGS

AI-powered advertising film projects are usually iterative and not linear. Making plans based on conventional timings and the usual “two-feed-back-meeting culture” underestimates the workload, risk and dependencies on models, seeds, data and control options.

The costs are easy to calculate in conventional production processes:

The duration of individual work steps is established and clearly definable based on professional responsibilities. By contrast, a large part of the technical expertise in AI-powered processes is invested in prompting, while the quality of the results hinges on extensive, uncontrollable training data. Even countless creative, detailed prompts cannot guarantee output that is completely predictable or precisely reproduced. For example, even a simple description such as “a woman in a red jumper” raises the question of how the type of knitting or material ought to be described in detail.

Example of a conventional project:

A conventional advert – such as a cheese commercial – is prepared by an experienced team over several weeks: Preparation of the story and

shooting boards, equipment, casting, styling. On set, the director ensures that the material is implemented and generated as planned. Takes are repeated until the defined expectations are fulfilled. Conclusion: high planning reliability, clear quality standards and comprehensive control.

Example of an AI project:

The same motif is generated using AI. The underlying content remains comparable, but implementation is based on a combination of multiple prompts, random generation and repeated iterations, often based on just a few reference images. Output control is only possible to a limited extent and may produce significant deviations from the briefing.

The area of advertising film production has an established structural process: Pre-production, production and post-production, accompanied by various coordination formats: Kick-off, pre-PPM, PPM, offline/online approvals, etc. Feedback is obtained after each step, for which two loops (agency and client) are usually scheduled.

This process has proven effective over the years and enables precise adjustment of details – assuming the budget and time frame are suitable.

This process can only be transferred to AI projects to a limited extent. In a current survey by the German Producers Alliance, the 40 participating companies in the advertising section responded as follows to the question “How many revision loops are usually necessary for AI projects?”:

- 1–2 iterations: 0
- 3–6 iterations: 6
- more than 6 iterations: 10
- highly variable: 16
- no experience: 8

None of the companies surveyed confirmed adherence to the classic “two loops”.

If agencies and clients continue to adhere to conventional processes and feedback structures, typical AI iterations must be explicitly factored into the timing in order to produce a realistic design of workload and expectations. To safeguard projects, it is advisable to define and embed “points of no return” in the timings.

One example: If an approved still is used as the basis for the downstream generation of moving pictures, subsequent adjustments – for example to the structure of a red jumper – can no longer be made in the moving picture. These “points of no return” within the process are comparable with the conventional edit lock in traditional workflows.

The difference lies in the large number of these points in AI projects.

7. RISKS & OPPORTUNITIES

AI provides a wide range of opportunities to make the process of commercial film production more effective and, in some cases, more creative. At the same time, its use entails many specific risks so that a deep assessment of both sides is a material basis for a smooth process and a high-quality result.

OPPORTUNITIES

AI tools can speed up processes immensely and relieve the team of the previously time-consuming “hard work”. AI can be used to automate individual work steps, especially in post-production. During creation, AI can be used as an imaginative sparring partner, which means that ideas can be sketched out in any area without much effort. This means that a wide range of styles can be tested within a very short timeframe.

RISKS

At the same time, lower predictability and greater uncertainty in regard to the results are also hallmarks of AI projects. Content generation is more uncontrolled and left to chance in many instances. In the end, integration processes can become more extensive than conventional production workflows, which can lead to scheduling deviations and hence to uncalculated additional costs.

Unresolved legal and ethical issues exist as well. The rights of third parties may be unknowingly affected and data protection violated.

At present, “uneducated” clients also present risks if they award projects based on false assessments and expectations.

8. CONCLUSION

A clearly defined and transparent approach to AI processes is essential to ensure that opportunities are exploited effectively and risks remain manageable. This includes realistic expectation management and, where possible, legal safeguards, defined “points of no return” and maximum expenditure.

When used consciously and critically, AI can expand productive and creative possibilities.

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