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REGULATORY CHALLENGES OF GENERATIVE ARTIFICIAL INTELLIGENCE IN VISUAL CREATION

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Intellectual Property
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ABSTRACT

Generative Artificial Intelligence is transforming visual creation processes and the legal framework governing them. Accordingly, this study examines the European and Spanish regulatory regimes applicable to AI-assisted visual creation and proposes a conceptual model designed to facilitate an understanding of regulatory requirements within the creative process. The findings highlight that visual creators using generative AI are legally responsible actors, depending on their functional role, the degree of originality involved, and the level of control exercised over the tools employed.

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1. Introduction

The emergence of Generative Artificial Intelligence (AI) has rapidly transformed the ecosystem of visual creation (Gavran et al., 2025), raising significant challenges for the regulation of AI use, intellectual property, and personal data protection within a regulatory framework suited to artists, designers, and other visual creators (Engler, 2024; NautaDutilh, 2024). Within only a few years, Generative AI has evolved from an emerging technology to occupying a central position in the creative industries, accompanied by swift professional adoption (Kreab, 2024). Indeed, the specific market for Generative AI applications, spanning advertising, design, audiovisual production, video games, and digital content, is valued in 2025 at over USD 4 million, with an annual growth rate of 32.8% with projections exceeding USD 12 billion by 2029 (Research and Markets, 2025)

Furthermore, AI-assisted visual creation places traditional legal concepts under strain, including authorship, originality, ownership of rights, and the limits governing the exploitation of works, within a regulatory framework that was not expressly designed to address algorithmic content production (He & Fang, 2024; Pérez, 2025). Unlike earlier technological developments, Generative AI does not operate merely as an auxiliary technical tool; rather, it plays a decisive role in shaping the visual outcome, thereby blurring the boundaries between human creation, technical automation, and large-scale data processing (Bird, 2024; García, 2025).

The progressive integration of Generative AI systems into visual creation processes is giving rise to significant legal challenges, particularly in relation to transparency, liability, and the protection of fundamental rights (Novelli et al., 2024; Yadav, 2025). For instance, from a copyright perspective, the adoption of Generative AI has constituted a disruptive factor in the protection of such rights (ECIJA, 2025). In this regard, CISAC (the International Confederation of Societies of Authors and Composers) estimates that Generative AI may place up to 25% of global copyright revenues at risk if the regulatory framework is not strengthened, amounting to approximately EUR 8.5 billion annually out of a total global collection of around EUR 13.97 billion (Gema, 2025).

The emergence of tools capable of generating images, videos, and visual content autonomously or semi-autonomously is reshaping traditional models of creative production, while simultaneously challenging established legal categories within intellectual property and data protection law. Accordingly, this article undertakes a review of the principal European and Spanish regulatory frameworks that visual creators must comply with in the fields of data protection, intellectual property, and Artificial Intelligence. To this end, the following research questions are formulated:

- RQ1: What are the principal European regulatory instruments on Artificial Intelligence, intellectual property, and data protection that professionals engaged in visual creation must take into account?
- RQ2: What are the principal Spanish regulatory instruments on Artificial Intelligence, intellectual property, and data protection with which visual creation professionals are required to comply?
- RQ3: Can a conceptual framework be developed to assist visual creators in incorporating regulatory implications into the visual creation process?

The present article seeks to assist visual creators, first, by facilitating their understanding of the implications arising from the intersection of the European and Spanish legal frameworks governing Artificial Intelligence, intellectual property, and data protection; and second, by providing a model designed to help them internalise the regulatory requirements that must be taken into account and/or integrated into the creative process when using Generative AI tools. To address these objectives, the article first develops a theoretical framework highlighting the principal challenges posed by Generative AI. It then outlines the methodology employed, presents the analysis undertaken, and finally sets out the results and conclusions derived from the study.

1.2. Challenges and Emerging Issues for Visual Creators in the Era of Generative Artificial Intelligence

The emergence and widespread adoption of Generative AI technologies within the field of visual creation have triggered an intense debate concerning their cultural, ethical, legal, and professional implications (Bird, 2024; Yasuda & Maruyama, 2026). These systems, built upon large-scale learning models trained on extensive image datasets, not only transform visual production processes but also reshape the regulatory frameworks that structure authorship, intellectual property and data protection

(Barnett, 2025). Moreover, Generative AI heightens the tension between human creativity and algorithmic production, giving rise to debates surrounding the implications of prompt-based creativity (Yasuda & Maruyama, 2026). Several scholars have shown how the capacity to generate images in an almost unlimited manner at minimal cost may foster a new visual culture grounded in the recombination of pre-existing styles and motifs (Arrojo, 2025; Magro-Vela et al., 2025), potentially contributing to perceptions of a devaluation of human creativity (Carroll, 2025). Within professional practice, some creators perceive AI both as a tool capable of expanding divergent thinking and as a potential threat to the distinctiveness of their work (Marzo & Albalat, 2021; Martín-Prada, 2024). At the same time, various AI artists have developed new patterns and works through the use of such systems, opening further debate regarding the creative potential of these technologies (García, 2025) and the need to protect those outputs that satisfy the criteria of originality. There is also a risk that Generative AI tools may consolidate stylistic features derived from human authors without their participation or consent (Lee, 2024).

The persuasive power of images means that synthetic manipulations can exert an immediate and far-reaching impact, thereby increasing the risk of harm to the reputation, honour, and image rights of the individuals depicted. In this respect, personal image has become one of the principal vectors of risk associated with Generative AI, given the capacity to recombine faces and bodies into synthetic images, which heightens the vulnerability of rights holders—particularly in contexts involving non-consensual sexualisation, stigmatisation, or reputational manipulation (AEPD, 2026). From an ethical standpoint, Generative AI tools also reproduce and amplify existing biases, leading to stereotyped representations in visual outputs that may reinforce structural inequalities and social injustices (García-Ull & Melero-Lázaro, 2023; Marinucci et al., 2023).

With regard to the use and governance of training data, Generative AI tools are typically trained on large-scale image datasets sourced from online platforms and digital repositories without the explicit authorisation of the relevant rights holders, thereby giving rise to legal disputes concerning copyright ownership, authors' rights and entitlement to remuneration (Pasetti et al., 2025). This issue has direct implications for copyright law, particularly in relation to fair compensation for uses derived from human creativity. It has given rise to tensions between technology developers and the artistic community (Lovato et al., 2024), as economic benefits tend to concentrate within technology companies, while creators—whose catalogues feed the datasets—often lack effective mechanisms for control, transparency, or remuneration (Pérez, 2025).

Finally, although much of the debate has focused on risks and potential harms, Generative AI in art and design education also presents opportunities to reconfigure creative and pedagogical processes. For instance, it has been observed that, within collaborative contexts, AI systems may assist in expanding divergent thinking and in exploring new forms of conceptual ideation (Gil-Ruiz & Domínguez-Lloria, 2025; González-Pérez et al., 2025).

2. Methodology

In order to address the research questions formulated in this study, a systematic review was conducted of the principal European and Spanish regulatory instruments concerning data protection, intellectual property, and Artificial Intelligence. Additional documents of relevance were also examined to complement the analysis and to determine their principal implications for image creation and for the interaction between these regulatory frameworks. In total, eighteen documents were analysed, ranging from binding legislation to codes of good practice, draft bills, and strategic policy instruments.

The documentation analysed at European level comprised the following:

- Charter of Fundamental Rights of the European Union (DOUE, 2016a).
- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (DOUE, 2016b).
- Regulation (EU) 2024/1689 laying down harmonised rules on Artificial Intelligence (AI Act) (DOUE, 2024).
- Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (DOUE, 2001).
- Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM) (DOUE, 2019).

- Directive 2012/28/EU on certain permitted uses of orphan works (DOUE, 2012).
- Draft Code of Practice on the labelling and marking of AI-generated content (European Commission, 2025).

At the Spanish level, the corpus of materials analysed included:

- Spanish Constitution of 1978 (BOE, 2024).
- National Artificial Intelligence Strategy (Gobierno de España, 2020).
- Spanish Charter of Digital Rights (Gobierno de España, 2021).
- Royal Decree 729/2023 approving the Statute of the Spanish Agency for the Supervision of Artificial Intelligence (BOE, 2023b).
- Draft Bill on the Proper Use and Governance of Artificial Intelligence (Gobierno de España, 2025).
- Royal Legislative Decree 1/1996 approving the consolidated text of the Intellectual Property Act (BOE, 2022a).
- Organic Law 3/2018 on the Protection of Personal Data and the Guarantee of Digital Rights (BOE, 2025a).
- Law 34/2002 on Information Society Services and Electronic Commerce (BOE, 2025b).
- Organic Law 1/1982 on the Civil Protection of the Right to Honour, Personal and Family Privacy, and One's Own Image (BOE, 2010).
- Organic Law 2/1984 on the Right of Rectification (BOE, 1984).
- Law 34/1988, General Advertising Act (BOE, 2023a).
- Law 13/2022, General Audiovisual Communication Act (BOE, 2022b).

3. Analysis of the Principal European and Spanish Regulatory Frameworks on Artificial Intelligence, Intellectual Property, and Data Protection

3.1. Analysis of the European Regulatory Framework

The European regulatory framework on Artificial Intelligence, intellectual property, and data protection is grounded in the Charter of Fundamental Rights of the European Union (2010). Accordingly, the analysis must begin with the recognition of several fundamental rights that operate as cross-cutting normative parameters: the right to respect for private and family life (Article 7); the fundamental right to the protection of personal data, requiring that all processing be carried out fairly, for specified purposes, and subject to the supervision of an independent authority (Article 8); the right to freedom of expression and information (Article 11); and the freedom of the arts and sciences (Article 13).

Regulation (EU) 2024/1689 constitutes the first comprehensive regulatory framework governing the use of AI systems within the European Union, adopting a risk-based approach and establishing specific obligations for general-purpose models. From the perspective of visual creators, the Regulation does not refer to the "creator" in artistic or authorship terms; rather, it structures obligations according to functional roles (Article 3): that of the provider and that of the deployer. Accordingly, within the field of visual creation, a single professional may assume one or both roles, depending on whether they develop or commercialise a Generative AI system, or instead use third-party tools to produce and disseminate visual content. In addition, visual creators must take into account the prohibited practices identified by the Regulation, including subliminal manipulation, the exploitation of vulnerabilities, the classification of individuals, risk assessment of persons, and certain uses of biometric systems, among others (Article 5). The Regulation also addresses the governance of training data used in AI models (Article 10), an aspect of particular relevance where visual creators work with data relating to identifiable individuals.

With regard to providers of generative models, the Regulation imposes obligations relating to technical documentation, the preparation of a summary of the content of the training data, and cooperation with deployers, with the aim of ensuring traceability and enabling an appropriate assessment of risks (Article 28). Providers of AI systems that generate synthetic text, image, audio, or video content are also required to ensure that such outputs are identifiable as artificially generated or manipulated, through the use of machine-readable marking techniques, as stated in Article 50(1). This transparency requirement likewise applies to AI tools performing assistive functions, such as standard editing or technical enhancement of images, provided that they do not substantially alter the content. In addition to these obligations, providers (Article 53) must comply with applicable intellectual property law and prepare summaries of the data used to train general-purpose models, making them publicly

available. These summaries are intended to enable rights holders who have expressly reserved their rights (Article 4 DSM) to assert their claims where their works have been used without authorisation.

Deployers are likewise required to disclose the artificial nature of image, audio, or video content constituting a deep fake where such content is liable to mislead users, pursuant to Article 50(4). This obligation is triggered by the objective risk of deception, irrespective of the creator's intent, thereby reinforcing the preventive character of the Regulation. Article 50(4) must be interpreted in light of Recital 134, which expressly acknowledges that transparency obligations should not unduly restrict freedom of expression or the freedom of the arts and sciences. In cases involving manifestly artistic, creative, satirical, or fictional works, disclosure of the artificial nature of the content may therefore be provided in a contextual and proportionate manner.

In both cases, providers and deployers, the Regulation requires that information concerning the artificial nature of the content be provided in a clear, accessible, and distinguishable manner at the time of its first public disclosure, thereby reinforcing protection against misleading uses, in accordance with Article 50(5). Furthermore, the Regulation establishes a regime of penalties and administrative fines applicable to providers and deployers, determining liability for non-compliance with its provisions (Articles 99 and 101).

Moreover, in December 2025, the European Commission published the first draft of the Code of Practice on the marking and labelling of AI-generated content, the final version of which is expected to be adopted during 2026. Although the Code will not be legally binding, it is intended to provide practical guidance enabling providers and deployers to comply voluntarily with the transparency obligations laid down in Article 50, through the use of various forms of labelling, including icons, metadata, watermarks, and other technical markers.

The European legal framework on intellectual property is founded upon a body of rules structured around copyright and related rights. First, Directive 2001/29/EC (InfoSoc Directive), on the harmonisation of certain aspects of copyright and related rights in the information society, constitutes a cornerstone in the protection of visual works. Its provisions concerning the exclusive rights of reproduction (Article 2), communication to the public (Article 3), and distribution (Article 4), as well as its system of exceptions and limitations (Article 5) and the rules on technological measures for rights management (Articles 6 and 7), are applicable both to the use of pre-existing works in automated processes and to the dissemination of visual content generated through AI tools.

Directive (EU) 2019/790, on copyright and related rights in the Digital Single Market, for its part, introduces a specific regime (Article 2) governing text and data mining (TDM). It is noteworthy that the DSM permits TDM for the purposes of scientific research as stated in Article 3(1) and, more broadly, for any purpose provided that the rights holder has not expressly reserved their rights, under Article 4(3), thereby allowing, in principle, the use of such materials for the training of AI systems. The exceptions set out in the DSM (Article 4) or permitting text and data mining, subject to an opt-out mechanism, while simultaneously affording rights holders mechanisms of control over the use of their works. Accordingly, copyright holders must take proactive steps to safeguard their works, and providers of generative models are required to gather and retain relevant information regarding the lawful use of training data or the existence of the necessary authorisations (Article 17).

Complementarily, Directive 2012/28/EU, on certain permitted uses of orphan works, may have implications for projects involving the digitisation of visual and cultural heritage collections that could potentially be used in training processes, albeit within the limits expressly defined by that Directive.

Regulation (EU) 2016/679 (GDPR) constitutes the central and directly applicable instrument governing the protection of personal data. The Regulation applies to the extent that "personal data" (Article 4) encompasses any information relating to an identified or identifiable natural person, including elements pertaining to their physical, cultural, and social identity. The GDPR establishes the general principles governing data processing (Article 5), imposing obligations of lawfulness, transparency, purpose limitation, and data minimisation. These requirements directly affect the collection and use of datasets for the training of generative models. For instance, the lawfulness of processing (Article 6) generally requires the data subject's consent, unless processing is carried out by public authorities in the exercise of their official functions—which, in the case of image processing, would typically relate to security or emergency uses—or where restrictions are authorised under specific legislative measures (Article 23). Accordingly, visual creators must determine whether the use of personal images is grounded in the data subject's consent, the performance of a contract, or a legitimate interest. Furthermore, the level of protection is heightened where processing involves special

categories of personal data in accordance with Article 9(2), unless explicit consent has been obtained, the processing is otherwise lawful and subject to appropriate safeguards, or it is carried out for research purposes, among other justifications. Finally, with regard to images or visual resources, these will qualify as special categories of data (as clarified in Recital 51) only where their processing entails the unique identification of a natural person.

3.2. Analysis of the Spanish Regulatory Framework

The Spanish Constitution of 1978 provides the constitutional framework for analysing legislation relating to Artificial Intelligence, intellectual property, and data protection in Spain. In particular, the fundamental rights and duties enshrined therein are grounded in the dignity of the person and the free development of personality as the foundation of the political and social order, in accordance with Article 10(1). The Constitution further guarantees the principle of equality and the prohibition of any form of discrimination (Article 14), as well as the right to honour, personal and family privacy, and one's own image, Article 18(1). In addition, it expressly provides for the limitation of the use of information technology provided for in Article 18(4), in order to safeguard honour, privacy, and personal image, and to ensure the effective exercise of individual rights. Moreover, the Constitution recognises and protects the freedom of artistic, scientific, and technical production and creation, as provided for in Article 20(1)(b). The exercise of this freedom is subject to the limits established in Article 20(4), namely the fundamental rights set out in Title I, in particular respect for honour, privacy, and personal image, as well as the protection of young persons and children.

In Spain, there are two key reference documents which, although lacking the status of binding legal norms, constitute an important interpretative framework for the development and use of AI. On the one hand, the National Artificial Intelligence Strategy (ENIA), adopted in 2020 and subsequently updated within the framework of España Digital 2026, sets out Spain's roadmap for the transparent, ethical, and human-centred development of AI. The Strategy seeks to enhance Spain's economic, environmental, and social competitiveness, while contributing to strengthening Europe's leadership in the field of Artificial Intelligence. On the other hand, the Spanish Charter of Digital Rights, approved in 2021, addresses the challenges of advancing a model of digitalisation in which the individual remains at the centre, and establishes a framework for action for public authorities. The section of the Charter devoted to rights in relation to AI sets out principles of particular relevance to visual creation, including requirements of transparency, auditability, explainability, and traceability.

At the regulatory level, the national provision specifically and entirely dedicated to AI is Royal Decree 729/2023 of 22 August, approving the Statute of the Spanish Agency for the Supervision of Artificial Intelligence (AESIA). AESIA is established as a public body with "public legal personality, its own assets, and managerial autonomy" (Article 1). Among its functions (Article 4) are advisory, supervisory, inspection, sanctioning, and awareness-raising activities in relation to AI systems. Its primary objective is to ensure that AI is used in a manner that is safe, ethical, and respectful of fundamental rights, aligning national oversight with the European regulatory framework. AESIA is vested with powers of inspection, verification, and control, as well as the authority to initiate sanctioning proceedings in coordination with other sectoral authorities. Although the sanctioning regime will be fully developed through the forthcoming Spanish AI Act, this framework already anticipates a model of administrative oversight over AI uses, including those connected to visual creation.

The Draft Bill on the Good Use and Governance of Artificial Intelligence represents the forthcoming transposition of Regulation 2024/1689 into Spanish law. The purpose of the future Act (Article 1) is to introduce the sanctioning regime set out in that Regulation. It formally designates AESIA (Article 6) as the national supervisory authority and establishes mechanisms for coordination among market surveillance authorities (Article 8). In addition, the Draft Bill introduces a "right of disconnection or product withdrawal" (Article 13) in respect of AI applications responsible for very serious incidents.

Visual creators must also take into account other relevant Spanish legislation. These include: Law 34/2002 on Information Society Services and Electronic Commerce (LSSI-CE), which establishes the regime of "civil, criminal and administrative" liability (Articles 13–17) applicable to service providers, particularly in relation to hosted or disseminated digital content; Organic Law 1/1982 (LOHII) on the civil protection of the right to honour, personal and family privacy, and one's own image, which protects against the capture, reproduction, or publication of a person's image in private contexts or for purposes other than those consented to pursuant to Article 7(5); Law 34/1988, General Advertising Act (LGP),

which prohibits unlawful advertising (Article 3), including misleading, unfair, or discriminatory commercial communications. Law 13/2022, General Audiovisual Communication Act (LGCA), which establishes the "general principles of audiovisual communication" (Title I), introduces specific obligations regarding the protection of minors (Article 89), requires the identification of commercial content (Article 122), and regulates unlawful commercial communications (Articles 123–125). Together, these provisions shape a complex regulatory environment in which AI-assisted visual creation may engage not only intellectual property and data protection rules, but also liability, image rights, advertising standards, and audiovisual regulation.

The Intellectual Property Act (TRLPI) constitutes the principal Spanish regulation in this field. The Act establishes a person-centred principle of authorship (Article 5), recognising as author exclusively the natural person who creates the work. In this regard, the Act defines the subject matter protected by copyright (Article 10) and includes categories particularly relevant to visual creation, such as artistic works, photographic works, and audiovisual works, in any medium or format, whether tangible or intangible, provided that they are original. The TRLPI grants authors the exclusive rights of "reproduction, distribution, communication to the public and transformation" (Article 17). Reproduction may be "direct or indirect, temporary or permanent, by any means and in any form, in whole or in part" (Article 18). As regards transformation, the rights in the transformed work shall belong to the new author, provided that it incorporates an original creative contribution and that the original author has authorised its use, including in the case of databases (Article 21). With respect to economic rights (Articles 26–30), the Act provides, as a general rule, that copyright protection for works, including audiovisual works and original photographs, configures visual creators who use Generative lasts for "the lifetime of the author and seventy years after his or her death or declaration of death" (Articles 26 and 28). However, in the case of mere photographs and reproductions, which are not considered works in the strict sense under Book I of the TRLPI, protection lasts for twenty-five years "from 1 January of the year following the date of the photograph or reproduction" (Article 128). Furthermore, databases are also protected under the Act (Article 12) through a *sui generis* right that "protects substantial investment, evaluated qualitatively or quantitatively […] in the obtaining, verification or presentation of their contents" (Article 133). Accordingly, the maker of a database may "prohibit the extraction and/or reutilisation of the whole or a substantial part" of its contents.

The protection of personal data within the Spanish legal system is structured through Organic Law 3/2018 on the Protection of Personal Data and the Guarantee of Digital Rights (LOPDGDD), which complements and develops (Article 1) the GDPR analysed above. In this regard, the LOPDGDD specifies the duty of confidentiality applicable to processed personal data (Article 5 and Articles 28–34) and regulates the lawful bases for processing, requiring, as a general rule, the data subject's consent (Article 6). This requirement is reinforced in cases involving the processing of special categories of personal data, including biometric data when used to uniquely identify a natural person (Article 9). The Act also incorporates the rights recognised under the GDPR: the right of access (Article 13), rectification (Article 14), erasure (Article 15), restriction of processing (Article 16), data portability (Article 17), and objection (Article 18). Furthermore, it transposes the sanctioning regime (Title IX), distinguishing between very serious infringements, which are subject to a three-year limitation period; serious infringements, subject to a two-year limitation period; and minor infringements, subject to a one-year limitation period. In parallel, fines exceeding €300,000 are subject to a three-year limitation period; fines ranging between €40,001 and €300,000 are subject to a two-year period; and fines equal to or below €40,000 are subject to a one-year limitation period. The LOPDGDD also details the structure and responsibilities of AEPD, the Spanish Data Protection Agency (Articles 44–56), which is the national data protection authority. The AEPD has its own legal personality, both public and private legal capacity, and operates independently. The Government of Spain appoints the Agency's leadership (President and Deputy) by Royal Decree, adopted by the Council of Ministers, for a renewable five-year term, following a proposal from the Ministry of Justice. In addition to the national authority, the Act provides for the possible existence of regional supervisory authorities (Articles 57–59), in accordance with the GDPR.

Finally, unlike the GDPR, the LOPDGDD expressly includes a catalogue of digital rights (Title X). Among these, visual creators must respect the right to digital security of all Internet users; the right to digital education at all levels of the education system; and the protection of minors online. The Act also recognises the right of rectification in order to safeguard honour, privacy and one's own image, in accordance with Organic Law 1/1982, as well as the right to communicate or receive truthful information under Organic Law 2/1984, which regulates the right of rectification. It further establishes

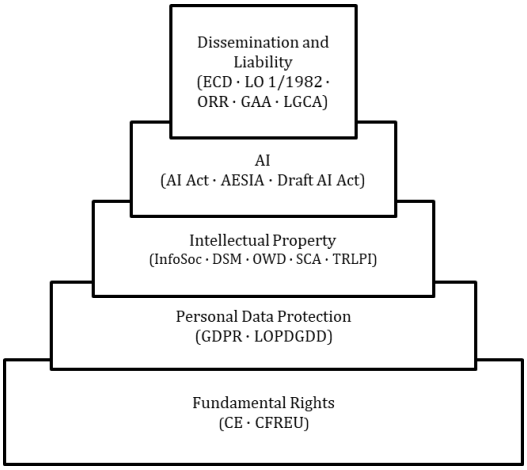
the right to the updating of information and reinforces the protection of minors' personal data. Additionally, the LOPDGDD enshrines the right to be forgotten, both in relation to Internet search engines and social media platforms, requiring the deletion of a person's data from search results under certain circumstances. Lastly, it recognises the right to a digital will, enabling individuals to determine the management of their digital assets and online presence after death.

4. Results

Following the analysis of the European and Spanish regulatory frameworks on Artificial Intelligence, intellectual property, and data protection, several key considerations emerge for visual creators. First, AI-assisted visual creation can no longer be regarded as a legally neutral space. The European regulatory framework (AI Act, GDPR, and copyright law), together with its Spanish implementation, positions visual creators who use Generative AI tools as legally responsible actors. Depending on their functional role and the degree of originality involved, a creator may qualify as a provider or a deployer of AI systems, thereby assuming obligations relating to transparency, due diligence, and risk control. The automation of the creative process does not exclude liability attribution; creators remain accountable for the visual content they generate and disseminate, even where such content is produced through third-party tools. Second, the regulatory framework reinforces a person-centred approach to the legal protection of creativity. Copyright protection is triggered only where there is an original human creative contribution. At the same time, intellectual property is shaped by the rules governing text and data mining and by the limitations arising from the use of pre-existing works in model training. For visual creators, this entails the need to document and make visible their creative intervention, as well as to ensure the lawfulness of the materials used. Finally, data protection law and fundamental rights operate as substantive limits on AI-assisted visual creation. The use of identifiable images, faces, or human bodies directly engages the GDPR, the LOPDGDD, and Organic Law 1/1982. Visual creation using AI must therefore be reconciled with requirements of consent, the prohibition of misleading or manipulative practices, and the protection of vulnerable groups, particularly in advertising, informational, or audiovisual contexts. In this respect, freedom of artistic creation is not eliminated, but exercised within a framework of balancing between innovation, truthfulness, and the protection of the individual.

Taken together, the principal effect of the European and Spanish regulatory framework is the transformation of the visual creator into a creative-legal subject, required to integrate legality as an intrinsic component of the creative process itself. Legal literacy, transparency in the use of AI, and due regard for fundamental rights thus become preconditions for innovative, ethical, and legally secure creative development. Accordingly, AI regulation operates through the superimposition of norms of differing nature and purpose, which function in a complementary manner. Although the European AI Act constitutes the primary regulatory instrument in this field at EU level, it does not displace intellectual property or data protection law but functions alongside them as a complementary regulatory layer structured around risk management, transparency and accountability. In order to assist visual creators in interpreting the complexity of the regulatory framework analysed, a conceptual model (Figure 1) is proposed. This model offers a structured representation of the legal framework applicable to AI-assisted visual creation, highlighting that regulation does not operate in isolation but through interdependent normative layers. Such a structure enables a clearer understanding of the hierarchy, function, and interaction of the various legal instruments that shape AI-based creative processes.

Figure 1. Interpretative Model of AI Regulation in Europe and Spain



Source: own elaboration, 2026

As illustrated in Figure 1, the base of the proposed model is formed by fundamental rights and constitutional principles, both within the Spanish legal order and that of the European Union. Human dignity, freedom of artistic creation, the protection of personal data, and the right to one's own image constitute the normative foundation that legitimises the creative use of AI, while simultaneously establishing substantive limits against harmful or rights-infringing uses. Built upon this foundation is a second layer corresponding to data protection law, which conditions all stages of AI-assisted visual creation, from model training to the generation and dissemination of content. The third layer consists of intellectual property law, which governs the attribution of rights over creative outputs. This level reflects a person-centred regulatory approach, as copyright protection is activated only where there is an identifiable and original human creative contribution. At a higher level lies the layer of AI-specific regulation, principally represented by Regulation (EU) 2024/1689. This instrument introduces obligations relating to transparency, risk management, and accountability, structured according to the role performed by different actors, thereby redefining the legal position of the visual creator. Finally, the uppermost layer comprises the rules governing the public dissemination of content and liability for its social impact, including legislation on honour and image rights, the right of rectification, digital services, advertising, and audiovisual communication. Taken together, this layered model demonstrates that the regulation of AI-assisted visual creation follows a logic of complementarity, in which no single layer may be interpreted in isolation. For visual creators, the model presented in Figure 1 facilitates the identification of legal obligations and risks at each stage of the creative process, reinforcing the notion that legality does not constitute an obstacle to innovation, but rather a condition for its ethical and legally sustainable development.

5. Conclusions

The integration and rapid adoption of Generative AI tools within visual creation processes has had a significant impact both on the discipline itself and on the legal regulation governing the production and dissemination of images (García, 2025; Pérez, 2025). The regulatory framework relating to Artificial Intelligence, intellectual property, and data protection finds its foundation, at European level, in the Charter of Fundamental Rights of the European Union and, at national level, in the Spanish Constitution. These instruments operate both as enabling frameworks and as substantive limits to AI-based visual innovation.

In relation to the first research question (RQ1), concerning the *European regulatory framework on AI, intellectual property, and data protection applicable to visual creation*, the Regulation (EU) 2024/1689 represents a normative turning point. Its significance does not lie in regulating authorship or the creative value of works, but rather in introducing a system of obligations linked to the use, deployment, and communication of Generative AI systems. From the perspective of visual creators, the AI Act reconfigures their legal position by distinguishing between the roles of provider and deployer according to the degree of technical and functional control exercised over the system. It thereby imposes proactive duties of diligence, transparency, and prevention of deception, particularly in relation to synthetic content liable to mislead or to simulate the appearance of real individuals. Complementarily, the

European intellectual property framework retains a person-centred orientation, enabling the protection of visual creations that embody an original human creative contribution. This regulatory configuration compels visual creators to reconsider the relationship between creativity, automation, and rights ownership, while also conditioning the use of pre-existing works in training processes. For its part, European data protection law, with the GDPR as its central pillar, establishes substantive limits on the use of images, videos, and visual representations of identifiable natural persons, both at the stage of model training and in the generation and dissemination of content. In doing so, it consolidates data protection as a structural component of the digital creative ecosystem.

With regard to the second research question (RQ2), concerning the *Spanish legal framework on AI, intellectual property, and data protection applicable to visual creation*, the analysis demonstrates that instruments such as the Statute of AESIA, the Spanish Charter of Digital Rights, and the Draft AI Act anticipate a regulatory model in which the legitimacy of the creative use of AI will depend upon compliance with standards of transparency, human oversight, and accountability, in close alignment with the European framework. Spanish intellectual property law, for its part, maintains a person-centred principle of authorship, requiring visual creators to evidence and document their creative intervention in AI-based processes, while reinforcing the need for heightened diligence in the use of pre-existing works. In parallel, Spanish data protection law, primarily structured through the LOPDGDD, also plays a central role as both a limit and a legitimising framework for AI-assisted visual creation. Although not specifically designed to regulate Generative AI, it applies to creative processes involving images of natural persons, imposing obligations relating to lawfulness, the processing of sensitive data, the exercise of data subject rights, and security measures. At the same time, it recognises a degree of flexibility linked to artistic purposes.

With regard to *the development of a conceptual model aimed at facilitating visual creators' understanding of the legal framework governing AI, intellectual property, and data protection* (RQ3), the analysis confirms that generative visual creation operates within a complex, cross-cutting, and multi-level legal environment, grounded in fundamental rights and constitutional principles. For this reason, the proposed model is structured in successive layers, demonstrating that AI regulation does not function in isolation, but rather in integration with other legal regimes. In this respect, the model illustrates that AI-based visual creation is legally viable when carried out within the limits imposed by human dignity, the protection of image rights, the lawfulness of data processing, and respect for human authorship. The upper layers, relating to digital dissemination, advertising, and liability for content, highlight that the legal impact of AI intensifies once creative output enters the public sphere. Accordingly, the use of AI within the creative process does not preclude legal responsibility; on the contrary, it requires visual creators to incorporate legality as a constitutive element of the creative process itself.

The creation of images through AI no longer depends solely on technical or artistic skills; it must also incorporate legal, ethical, and risk-assessment competences. In this context, regulatory compliance should be integrated as a structural component of professional practice, rather than perceived as an external constraint upon the creative process. This evolution carries significant implications for the education and continuous professional development of visual creators, the organisation of creative teams, and the definition of professional standards within an ecosystem increasingly mediated by AI technologies. Accordingly, future research would benefit from examining the extent to which professionals are integrating legal knowledge into their daily practice, as well as the tensions that arise between creativity, productive efficiency, and regulatory requirements. Such analysis would make it possible to assess whether a new profile of visual creator is emerging—one characterised by heightened normative awareness and by forms of shared authorship between human intervention and algorithmic processes.

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