

# The Intersection of Copyright and Generative Artificial Intelligence

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# Three Copyright Issues Implicated by Generative AI

- Does ingestion for training AI constitute infringement?
- Does output infringe?
- Is output copyrightable?

The answer is different in different jurisdictions

# Does Ingestion Infringe?

- Training AI requires ingestion of millions of works.
- Software analyzes these works to discover patterns, relationships, and trends, which are reflected in the AI “model.”
- Most of the countries that have examined this issue have determined that ingestion for AI training does not infringe.\*

# Does Ingestion Infringe?

- US: Several courts have found that assembly of large databases for AI functions such as search and plagiarism detection are fair use.
- But these AI functions were more basic (and less likely to have competitive impact) than generative AI
- Several pending cases, including one by comic Sarah Silverman
- Israel Ministry of Justice opinion letter finds that copying involved with machine learning is a fair use.

# Does Ingestion Infringe?

- EU Copyright in the Digital Single Market Directive Art. 3: permits text and data mining for noncommercial scientific research of lawfully accessed work (is TDM the same thing as AI?)
- EU CDSMD Art. 4: permits text and data mining for other purposes subject to opt-out.
- EU proposed AI Act: would require disclosure of categories of inputs.
- Most companies that scrape works from the Internet respect robot exclusion protocols.
- Singapore and Japan also have exceptions for ingestion.

# Does Output Infringe?

- This can be assessed under traditional copyright principles
- In the US: 1) was there access to the original work?; 2) is the output substantially similar in protected expression?
- Who is liable? AI provider as well as user? Who is a direct infringer and who is a secondary infringer?

# Is Output Copyrightable?

- US: Only works reflecting human originality can receive copyright protection. So work created completely by GAI is not protectable. But user directs the AI with prompts: at what point is their sufficient human originality?
- Copyright Office: Must disclose what is created by GAI. This might be more difficult than Office thinks.
- Most other countries have similar human originality requirement, except UK: Copyright Designs and Patents Act 1988 expressly provides for copyright protection of computer-generated works without a human creator.

**Thank you for your attention!**



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